

THE NCAA'S TRANSFER CONUNDRUM

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INTRODUCTION

In September 2018, Kelly Bryant was demoted from the position of starting quarterback for the Clemson University football team.¹ While it is not uncommon for players to be benched in college athletics, whether it is a result of performance, behavior, or otherwise, Bryant reacted negatively to the benching, calling it a “slap in the face.”² Only a few days after being benched, and after a conversation with Clemson head coach Dabo Swinney, Bryant announced that he would be transferring to a new school.³

Transfers in National Collegiate Athletic Association (NCAA) Division I sports have become a topic of interest and controversy in recent years. Trends from the NCAA's own research appear to indicate that there has been a small uptick in the incidence of student-athlete transfers in the NCAA's revenue-generating sports,⁴ though the increase in some sports has been smaller than others. More specifically, men's ice hockey has seen a

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1 Adam Rittenberg, *Benched QB Kelly Bryant Misses Clemson's Tuesday Practice*, ESPN (Sept. 25, 2018), http://www.espn.com/college-football/story/_/id/24797781/kelly-bryant-relegated-clemson-bench-misses-tuesday-practice.

2 Andrea Adelson, *Kelly Bryant to Transfer from Clemson, Calls Demotion 'Slap in the Face'*, ESPN (Sept. 26, 2018), http://www.espn.com/college-football/story/_/id/24801672/demoted-clemson-tigers-qb-kelly-bryant-says-transfer.

3 *Id.* Bryant ultimately transferred to the University of Missouri, where he is expected to play in the 2019–20 football season as a graduate transfer. Barrett Sallee, *Former Clemson QB Kelly Bryant Chooses Missouri as His Transfer Destination*, CBS SPORTS (Dec. 5, 2018), <https://www.cbssports.com/college-football/news/former-clemson-qb-kelly-bryant-chooses-missouri-as-his-transfer-destination/>.

4 For the purposes of this Note, “revenue-generating sports” in the NCAA refer to men's ice hockey, men's and women's basketball, baseball, and football. These are *not* the only sports that generate any revenue at all; rather, they are the sports specifically excluded from the NCAA's “One-Time Transfer Exception,” which is discussed *infra* subsection I.B.3. 2018–19 NCAA DIVISION I MANUAL § 14.5.5.2.10, at 187 (2018) [hereinafter DIVISION I MANUAL], <https://www.ncaapublications.com/p-4547-2018-2019-ncaa-division-i-manual-august-version-available-august-2018.aspx>.

dramatic increase in the proportion of its student-athletes who have transferred in the last fourteen or so years, while men's and women's basketball and bowl subdivision football have all seen modest increases in the number of student-athlete transfers over that same time frame.⁵ AthleticDirectorU has done an in-depth analysis of the recent trend of transfers in NCAA men's basketball, stating that "transfers have become a vitally important aspect of college basketball."⁶ The NCAA's graduate-transfer rule—which generally permits student-athletes, who are enrolled in graduate school at a different institution from where they received their undergraduate degree, to participate immediately in their respective sport⁷—has contributed significantly to the overall prevalence and impact of student-athlete transfers on collegiate athletics. The number of graduate transfers in the NCAA has increased markedly since 2011.⁸ Many of the most noteworthy cases of student-athletes exercising their graduate-transfer eligibility have come in just the last few years, mostly in college football.⁹ Graduate-transfer quarterbacks in particular have drawn a large amount of attention, if for no reason other than their importance on the football field. In what has become a new trend in college football, reliance on quarterbacks joining Division I teams via the graduate-transfer rule is beginning to look like the new normal.¹⁰ Because of the

5 See NCAA RESEARCH, TRANSFER COMPETITION OF DIVISION I TEAMS (2018), http://www.ncaa.org/sites/default/files/2018RES_APR_transfer_slides_june2018_final_20180716.pdf (noting, among other things, that "[t]he uptick in four-year college transfer among women is occurring across a number of sports, but is particularly visible in women's basketball"); *Transfer Rate Averages and Trends: Trends by Sport*, NCAA, <http://www.ncaa.org/about/resources/research/transfer-rate-averages-and-trends> (last visited Oct. 15, 2018).

6 Eli Boettger, *Investigating College Basketball's Transfer Movement*, ATHLETICDIRECTORU, <https://athleticdirectoru.com/articles/investigating-college-basketballs-transfer-movement/> (last visited Oct. 15, 2018).

7 DIVISION I MANUAL, *supra* note 4, § 14.6.1, at 190.

8 See *Prevalence of Graduate Transfer in Division I*, NCAA, <http://www.ncaa.org/about/resources/research/prevalence-graduate-transfer-division-i> (last updated Sept. 2018) ("Graduate transfers are most prevalent on a percentage basis in men's basketball (2.1 percent of current players are grad transfers), women's basketball, football, and men's and women's track and field.").

9 It is also worth noting that the NCAA's own research indicates that "the number of [cases of graduate transfers in men's football] has increased almost tenfold since 2011 (17 in 2011, 168 in 2017)." *Id.*

10 See Brooks Kubena, *Joe Burrow Marks First for LSU Amid Spiking Trend—A Deep Dive into Grad Transfers*, ADVOCATE (Aug. 29, 2018), https://www.theadvocate.com/baton_rouge/sports/lsu/article_1a1cb42e-abba-11e8-8eef-530e6fdd701b.html (noting that there were "24 graduate transfer quarterbacks making their debuts on new Division I rosters" at the beginning of the 2018 college football season); Tom Layberger, *LSU's Joe Burrow Among Grad Transfer Quarterbacks That Appeared with New Teams*, FORBES (Sept. 4, 2018), <https://www.forbes.com/sites/tomlayberger/2018/09/04/lsus-joe-burrow-among-grad-transfer-quarterbacks-that-appeared-with-new-teams/#1a67b99e3221>. In another high-profile example of a quarterback using the graduate-transfer exception to gain immediate eligibility at a new school, Jalen Hurts transferred from the University of Alabama to the University of Oklahoma in January 2019 after playing three seasons at Alabama. Cliff Brunt, *Former Alabama QB Jalen Hurts Transferring to Oklahoma*, NCAA (Jan. 16, 2019),

immense amount of media attention that college football generally garners, it may seem as though transfers (graduate or otherwise) are most prevalent in that sport only, but the impact of the transfer rules has been felt throughout collegiate athletics.

College coaches and administrators have not been shy about discussing the impact of the increasing number of transfers in their respective sports. One men's basketball coach anonymously said that "[t]ransfers and grad transfers have changed recruiting more for us than any calendar change."¹¹ The popularity of graduate transfers, and the fact that the student-athletes have immediate eligibility upon transferring to play without sitting out a year, seems to have galvanized the movement for more flexibility and freedom for undergraduate student-athletes who want to have control over where they play a college sport, without having to wait a year sitting out under the NCAA's longstanding year-in-residence rule.¹² Coaches have become concerned with the creation of something akin to free agency in professional sports, fearing that allowing student-athletes to transfer at will and without restriction will damage the landscape of college athletics. And the graduate-transfer rule seems to be particularly hard on mid-major schools that risk losing their best players if they develop into great players and are able to graduate early or retain a year of eligibility after receiving their undergraduate degrees. While the rule was undoubtedly intended to create a reward of sorts for student-athletes who earned their diplomas, school officials seem to believe that it has had a fairly negative impact on the sports themselves.¹³ This has led to some coaches pondering measures that seem inconsistent with the goals of the graduate-transfer rule and with academic considerations generally: at least one mid-major Division I men's basketball head coach has stated an intention to "slow[] down the graduating process" for student-ath-

<https://www.ncaa.com/news/football/article/2019-01-16/jalen-hurts-alabama-oklahoma-transfer>. Hurts was the starting quarterback for Alabama for his first two seasons, leading the team to two national championship games. *Id.*

11 Matt Norlander, *Candid Coaches: Will the NCAA's New Rules and Calendar Make Recruiting Better or Worse in College Hoops?*, CBS SPORTS (Aug. 24, 2018), <https://www.cbssports.com/college-basketball/news/candid-coaches-will-the-ncaas-new-rules-and-calendar-make-recruiting-better-or-worse-in-college-hoops/>.

12 Many of the NCAA transfer bylaws include a requirement of enrollment for one full academic year before a transferring student-athlete will be eligible to play his sport at a new school. See DIVISION I MANUAL, *supra* note 4, § 14.02.14-.14.1, at 161. This year-in-residence requirement has existed since the 1950s. Dennis Dodd, *Why the NCAA Faces an Uphill Battle as It Again Tries to Reform Its Transfer Rule*, CBS SPORTS (Apr. 2, 2018), <https://www.cbssports.com/college-football/news/why-the-ncaa-faces-an-uphill-battle-as-it-again-tries-to-reform-its-transfer-rule/>.

13 See Jeff Goodman, *The Graduate-Transfer Rule Is Causing All Kinds of Problems*, ESPN (Sept. 8, 2016), http://www.espn.com/mens-college-basketball/story/_/id/17487374/the-graduate-transfer-rule-hurting-college-basketball (discussing opinions of numerous college coaches and concluding that while the academic goals of the graduate-transfer rule were "pure," there have been unexpected side effects of the rule being enacted by the NCAA).

letes so as to lessen the chances that the players are able to jump ship, so to speak, to a larger or more prominent program.¹⁴

In a sense, some feel as though the graduate-transfer rule actually penalizes schools for “doing their jobs well” by supporting their student-athletes and helping them graduate early or on time.¹⁵ And most concerning to these coaches is the specter of a free-agent market. Coaches and schools have taken notice of the trend in higher-level college basketball schools of putting together a list ahead of the season of any student-athletes who may be eligible to transfer as a graduate student.¹⁶ And it does not stop there—in some instances, schools will then contact former coaches of the eligible student-athletes to express their interest in a potential graduate-transfer situation.¹⁷ As a result of the potential for collegiate free agency, some coaches have suggested alterations to the current graduate-transfer rule. One coach recommended an additional graduate-transfer requirement that schools have to use a scholarship for graduate transfers for two years, unless the student-athlete actually receives his or her graduate degree in one year.¹⁸ Another coach proposed getting rid of the graduate-transfer rule altogether, suggesting a broad rule for all transfers: “Just have people sit no matter what If you transfer, you have to sit a year.”¹⁹ Coaches are not the only ones who are concerned about the more lax transfer rules—some players have spoken up, as well. Hunter Renfrow, a wide receiver for Clemson’s football team, expressed his concerns about the rule that would permit Kelly Bryant to transfer after playing four games this season before being benched.²⁰ Ren-

14 *Id.* (quoting a mid-major head coach).

15 *Id.*

16 *Id.*

17 *Id.*

18 *Id.* This recommendation, or at least something very similar to it, was recently proposed as an amendment to the graduate transfer rule by the NCAA’s Transfer Working Group. This proposal is discussed *infra* subsection II.A.3.

19 *Id.* (quoting Southern Illinois coach Barry Hinson). Not all coaches are as harsh about the graduate transfer rule: University of North Carolina coach Roy Williams said: “Let’s face it: This is a great rule for the kids and a terrible one for the coaches that lose these kids. In principle, it’s OK. But it’s not very good for college basketball.” *Id.* In general, however, coaches and schools feel that the rule has created trends that have the potential to harm college athletics.

20 David M. Hale, *Clemson’s Hunter Renfrow Frustrated by Redshirt Rule Leading to Transfers*, ESPN (Oct. 3, 2018), http://www.espn.com/college-football/story/_/id/24871567/hunter-renfrow-clemson-tigers-frustrated-new-redshirt-transfer-rule. The specific rule Renfrow was referring to can be found in DIVISION I MANUAL, *supra* note 4, § 12.8.3.1.6, at 83. This newly adapted rule applies only to football and permits student-athletes to participate in up to four games in a season without using up one of their seasons of eligibility. *Id.* As a senior who had participated in each of his first three seasons, Kelly Bryant would have exhausted his eligibility had he played five games. But under the new rule, he was able to claim a redshirt even though he had already played in four games in the 2018 season. That he could then take advantage of the graduate transfer rule using the year of eligibility he saved via bylaw 12.8.3.1.6 was perhaps an unintended consequence of the new redshirt rule. See Alex Kirshner, *How Kelly Bryant’s Transfer Works, Thanks to 2 NCAA Rules Working in*

frow's uneasiness is similar to the free-agency concerns held by college coaches: "Now Week 4 every year is going to be the trade deadline, and everyone is going to make decisions. I don't like that part of it. When you commit to a school, when you commit to a team, that's your team, right?"²¹ Thus, there is widespread concern with removing restrictions on student-athlete transfers, especially as it pertains to consequences normally associated with professional sports, such as free-agency and trade deadlines. Meanwhile, the student-athletes themselves are hoping to achieve a level of freedom that, in their eyes, would only be fair. One example of a common fairness argument makes the point that "[a] coach can leave whenever he wants. There's no reason a player shouldn't be able to [transfer and be eligible] right away."²² Another common fairness comparison is to other, non-athlete students: "You're treating the student-athlete different than everybody else on that campus Nothing stops the chemistry major from leaving Gonzaga and going to the University of Washington."²³ And perhaps the most notable equity concern is that some transfer rules apply only to the revenue-generating sports.²⁴

The variety of opinions surrounding the transfer rules makes clear that there is no easy solution and the NCAA faces difficulties in shaping these rules. Well-intentioned proposals may have unintended effects that could damage student-athletes, the schools they play for, and college sports as a whole. It is important to lay out the many concerns articulated by college coaches and schools regarding the graduate-transfer rule because it is likely that a softening of the *undergraduate*-transfer rules would result in the same issues on a broader scale. Thus, the NCAA must inevitably weigh those same complications as it attempts to form the appropriate rules related to student-athlete transfers in Division I athletics, regardless of whether the transferring student-athlete is a graduate or undergraduate student. The issue of transfers is one that the NCAA will have to deal with for the foreseeable future. As student-athletes seek more control over where they play in the interest of fairness and empowerment, and the concerns of a free agency free-for-all continue to be asserted by coaches and administrators, the NCAA must navigate the issue of transfer regulation and revision with great care, thought, and attention to detail.

This Note articulates a normative framework for analyzing NCAA transfer rules, arguing that a balance must be struck between fairness for student-athletes and appropriate restrictions on transfer rules so as to prevent full-on free agency in collegiate athletics. The Note additionally argues that institutional autonomy over academics is a factor the NCAA must consider along with fairness and prevention of free agency. This Note will not wade into the

Tandem, SB NATION (Sept. 26, 2018), <https://www.sbnation.com/college-football/2018/9/26/17900294/kelly-bryant-transfer-clemson>.

21 Hale, *supra* note 20.

22 Dodd, *supra* note 12 (second alteration in original).

23 *Id.*

24 *Id.*

complicated waters of potential antitrust issues with the NCAA, nor discuss the controversial calls for pay-for-play or unionization for student-athletes—instead, this Note will simply take for granted that it is desirable for the NCAA to avoid free agency and to maintain the amateuristic aspects of college sports. Part I will review the basics of the NCAA, lay out the current rules that govern Division I transfers, and discuss the normative structure that will be used in examining specific proposals and outstanding issues related to NCAA transfers. Part II analyzes each of four recent proposals by the NCAA Transfer Working Group to see how well they comport with the normative framework, and discusses the lurking problems surrounding the one-time transfer exception. The Note argues that a focus on the common ground between student-athletes' interest in fairness and college athletics' (assumed) interest in maintaining amateurism should guide the NCAA in shaping its transfer rules going forward.

I. THE NCAA: A BRIEF OVERVIEW, CURRENT TRANSFER RULES, AND NORMATIVE CONSIDERATIONS

A. *Membership, Purpose, and Function*

The NCAA was founded in 1906 under the name “Intercollegiate Athletic Association” in order to “draw up competition and eligibility rules for gridiron football and other intercollegiate sports.”²⁵ The body changed its name to the current National Collegiate Athletic Association in 1910 and continued to expand the scope of the sports it governed over time.²⁶ Currently, the NCAA includes over 1100 member universities and colleges, almost half a million student-athletes, and twenty-four sports.²⁷ Member schools of the NCAA have been divided into three divisions since 1973²⁸: Divisions I, II, and III.²⁹ This structure is intended to “create[] a fair playing field for like-minded institutions and provide[] student-athletes with a wide spectrum of opportunities.”³⁰

Since this Note focuses primarily on Division I transfers, it will be useful to go over the membership requirements for Division I institutions. For starters, member schools are permitted to determine for themselves which of the

25 *National Collegiate Athletic Association*, ENCYCLOPÆDIA BRITANNICA, <https://www.britannica.com/topic/National-Collegiate-Athletic-Association> (last visited Oct. 17, 2018).

26 *Id.*

27 *What Is the NCAA?*, NCAA, <http://www.ncaa.org/about/resources/media-center/ncaa-101/what-ncaa> (last visited Oct. 17, 2018).

28 *See id.*; *see also National Collegiate Athletic Association*, *supra* note 25.

29 *Divisional Differences and the History of Multidivision Classification*, NCAA, <http://www.ncaa.org/about/who-we-are/membership/divisional-differences-and-history-multidivision-classification> (last visited Oct. 17, 2018) [hereinafter *Multidivision Classification*]. This resource also provides a helpful timeline of the historical development of the multidivisional system of the NCAA, beginning with the creation of the three divisions in 1973.

30 *Membership*, NCAA, <http://www.ncaa.org/about/who-we-are/membership> (last visited Oct. 17, 2018).

three divisions they fall into.³¹ Each of the three divisions creates its own set of bylaws which must comport with the NCAA's core values³²—thus, a member school simply needs to satisfy the membership requirements of a division on an annual basis in order to join that division.³³ The bylaws for any given division typically govern a wide variety of categories for member schools and their sports teams, covering “academic eligibility of student-athletes, amateurism restrictions, recruiting guidelines for coaches and players, financial aid limits and requirements, athletic department budgetary oversight, and playing and practice season hour requirements.”³⁴ The NCAA Division I Manual lays out criteria for Division I membership in bylaw 20.9.³⁵ Such requirements include that the school sponsor seven sports each for men and women (or six for men and eight for women), satisfy minimum requirements for number of games played against Division I opponents, and meet a minimum number of financial aid awards for its student-athletes.³⁶ Division I schools generally have the largest student bodies, the largest athletic budgets, and the highest number of athletic scholarships available to be given to student-athletes.³⁷ As a result, Division I sports tend to draw the most attention and generate the most revenue of the three NCAA divisions.³⁸ As far as size goes, Division I falls in the middle of the three divisions with about 350 Division I institutions and over 170,000 student-athletes in total,³⁹ compared to about 300 schools and 120,000 student-athletes in Division II and 450 schools and 190,000 student-athletes in Division III.⁴⁰ Because of the popularity of Divi-

31 *Id.*

32 *Id.*; see also *infra* note 50 and accompanying text.

33 See *Membership*, *supra* note 30.

34 Joseph W. Schafer, Comment, *NCAA Division I Transfers “Are Now Basically Screwed”: The Battle Against the NCAA’s Year in Residence Rule in the Seventh Circuit*, 66 BUFF. L. REV. 481, 490 (2018); see also DIVISION I MANUAL, *supra* note 4, at iii–v (table of contents, showing an overview of the operating Division I bylaws and reflecting what each article generally covers, such as “Ethical Conduct” in Article 10, “Amateurism and Athletics Eligibility” in Article 12, and “Recruiting” in Article 13).

35 DIVISION I MANUAL, *supra* note 4, § 20.9, at 368.

36 *Multidivision Classification*, *supra* note 29. There are additional sport-specific requirements for Division I member institutions. One such example is that Football Bowl Subdivision schools must meet a minimum attendance amount over a rolling two-year period: an average of “15,000 people in actual or paid attendance per home game.” *Id.*; DIVISION I MANUAL, *supra* note 4, § 20.9.9.3, at 376.

37 *NCAA Division I*, NCAA, <http://www.ncaa.org/about?division=D1> (last visited Oct. 18, 2018).

38 See generally NCAA, 2017 FOOTBALL ATTENDANCE (2017), http://fs.ncaa.org/Docs/stats/football_records/Attendance/2017.pdf; NCAA, MEN’S BASKETBALL ATTENDANCE 2018 (2019), http://fs.ncaa.org/Docs/stats/m_basketball_RB/2019/Attendance.pdf; NCAA, NCAA WOMEN’S BASKETBALL ATTENDANCE RECORDS THROUGH 2017–18 (2019), http://fs.ncaa.org/Docs/stats/w_basketball_RB/2019/Attendance.pdf.

39 *NCAA Division I*, *supra* note 37.

40 See *About NCAA Division II*, NCAA, <http://www.ncaa.org/about?division=D2> (last visited Oct. 18, 2018); *Composition and Sport Sponsorship of the NCAA Membership*, NCAA (Sept. 2018), <https://www.ncaa.org/about/who-we-are/membership/composition-and-sport-sponsorship-ncaa-membership>; *Division II Facts and Figures*, NCAA, <http://www.ncaa.org/>

sion I athletics and the revenue that many Division I sports generate—particularly football, men’s hockey, and men’s and women’s basketball⁴¹—Division I transfers draw the most attention. And because of the amount of revenue generated by those sports, the fanfare associated with them, and their potential for serving as de facto “farm systems” for some professional sports,⁴² the NCAA has been cautious in drafting its transfer regulations—and all of its bylaws—in an attempt to adhere to its stated principles and values, especially those relating to its stated “Commitment to Amateurism.”⁴³

The NCAA Constitution sets out the purposes and fundamental policy of the organization.⁴⁴ In addition to providing the general legislative and structural goals of the Association,⁴⁵ both the purposes and policies laid out establish the NCAA’s clear and explicit commitment to maintaining an amateur model of athletics for its member institutions. For example, one stated purpose includes the promotion and development of “athletics participation [at

division-ii-facts-and-figures (last visited Oct. 18, 2018); *NCAA Division III*, NCAA, <http://www.ncaa.org/about?division=D3> (last visited Oct. 18, 2018).

41 See generally NCAA, REVENUES AND EXPENSES 2004–15: DIVISION I INTERCOLLEGIATE ATHLETICS PROGRAMS REPORT (2016), <http://www.ncaapublications.com/p-4443-division-i-revenues-and-expenses-2004-2015.aspx>.

42 While Major League Baseball has a robust minor league farm system, the National Basketball Association (NBA) only has the “NBA G League,” which has not as of yet developed into a legitimate farm system for professional basketball, and the National Football League and Women’s National Basketball Association do not have any lower developmental leagues. This has led some to brand certain college sports as farm systems for their professional sport counterparts. See, e.g., *Hall v. Univ. of Minn.*, 530 F. Supp. 104, 109 (D. Minn. 1982) (“The exceptionally talented student athlete is led to perceive the basketball, football, and other athletic programs as farm teams and proving grounds for professional sports leagues.”); Frank Fear, *Restructuring D-1 College Basketball as the NBA’s Minor League*, SPORTS COLUMN (Oct. 5, 2017), <http://www.thesportscol.com/2017/10/restructuring-d-1-college-basketball-as-nbas-minor-league/> (proposing a new format for college basketball wherein colleges would officially serve as official developmental systems for NBA teams). Though the controversy surrounding college sports as farm systems is important and interesting, it is outside the scope of this Note to the extent that it goes beyond simply providing some context to the NCAA’s considerations in forming its transfer rules.

43 DIVISION I MANUAL, *supra* note 4, at Commitments to the Division I Collegiate Model.

44 *Id.* §§ 1.1–6.4.2.2, at 1–44. The NCAA Constitution can be found within the *Division I Manual* in articles 1–6. It covers topics such as the organization’s “purposes and fundamental policy,” principles for conduct, membership and organization, the NCAA legislative process, and “institutional control.” *Id.*

45 See *id.* §§ 1.2(a)–(i), 1.3.2, at 1 (seeking to “initiate, stimulate and improve” college athletics; upholding the “principle of institutional control”; formulating and publishing of “rules of play governing intercollegiate athletics”; preserving records; establishing eligibility standards for NCAA athletic events, and “supervis[ing] the conduct” of those events; legislating “through bylaws or by resolutions . . . upon any subject of general concern to the [Division I] members related to the administration of intercollegiate athletics”; “establish[ing] standards” allowing member institutions to maintain high-level athletics programs; and finally noting that legislation is intended to cover a variety of areas including “admissions, financial aid, eligibility and recruiting” and that noncompliant member institutions can be punished by an “infractions process”).

the intercollegiate level] as a recreational pursuit.”⁴⁶ Another is to promote the adoption of eligibility rules by its members “to comply with satisfactory standards of . . . amateurism.”⁴⁷ Yet another is to “cooperate with other amateur athletics organizations.”⁴⁸ And under the “Fundamental Policy” heading, the constitution states the following goal: “A basic purpose of this Association is to maintain intercollegiate athletics as an integral part of the educational program and the athlete as an integral part of the student body . . . retain[ing] a clear line of demarcation between intercollegiate athletics and professional sports.”⁴⁹ Thus, a person provided only with article 1 of the constitution could reasonably conclude that at least one consistent theme permeating the NCAA’s organization, structure, and actions is a desire to provide college students with an athletic experience that is fundamentally different from professional sports.

Further guidance as to the background for the NCAA’s philosophy is provided in a list of seven “core values” that guides the NCAA and functions as a mission statement of sorts. Those self-proclaimed core values include a “belief in and commitment to”: (1) a collegiate model of athletics, (2) the highest levels of integrity and sportsmanship, (3) the pursuit of excellence in both academics and athletics, (4) the supporting role that intercollegiate athletics plays in community forming, (5) an inclusive culture, (6) respect for institutional autonomy and philosophical differences, and finally (7) presidential leadership of intercollegiate athletics.⁵⁰ The first core value listed, the “collegiate model of athletics,” is one worth probing further to understand what exactly that model is.⁵¹ Fortunately, in its Division I Manual, the NCAA provides an overview of what its commitment to the “Division I Collegiate Model” means.⁵² Notably, the first two statements as to what that commitment means are focused on “[v]alue-[b]ased [l]egislation” and “[a]mateurism.”⁵³ In seeking to enact value-based legislation, the NCAA Division I member institutions are to bear in mind an intent to “foster competition in amateur athletics . . . and advance the Collegiate Model” in drafting and enacting bylaws.⁵⁴

The “Commitment to Amateurism” section focuses on the goal of interweaving intercollegiate athletics as part of a student-athlete’s educational experience and reiterates the importance of “maintaining a line of demarcation between student-athletes who participate in the Collegiate Model and athletes competing in the professional model.”⁵⁵ The remaining sections

46 *Id.* § 1.2(a), at 1.

47 *Id.* § 1.2(c), at 1.

48 *Id.* § 1.2(g), at 1.

49 *Id.* § 1.3.1, at 1.

50 *NCAA Core Values*, NCAA, <http://www.ncaa.org/about/ncaa-core-values> (last visited Oct. 17, 2018).

51 *Id.*

52 See *DIVISION I MANUAL*, *supra* note 4, § 20.9.

53 *Id.* § 20.9.1.1–2, at 368.

54 *Id.* § 20.9.1.1, at 368.

55 *Id.* § 20.9.1.2, at 368.

continue to assert a commitment to an athletic system that is supposed to be designed in a way that renders participation in intercollegiate athletics “an integral part of the student-athlete’s effort to acquire a degree in higher education.”⁵⁶ From all of this, it is clearly the NCAA’s intention to create and foster a brand of athletic competition for American colleges and universities that is markedly and clearly distinct from any professional sporting league.

The various purposes, policies, and the “Collegiate Model” in the Division I Manual also speak to a concern for the well-being of student-athletes and the promotion of not only their physical fitness and participation in intercollegiate competition, but also their pursuit of an education and a degree. The Division I Collegiate Model specifically includes a “Commitment to Student-Athlete Well-Being,”⁵⁷ which presents a variety of principles to further guide the NCAA in lawmaking. First, Division I athletic programs are required to be managed in a way that “enhance[s] the well-being of student-athletes” while also ensuring that no outside commercial—or other— influences “interfere with [the student-athletes’] scholastic, athletics or related interests.”⁵⁸ It is also apparent from this particular commitment that the NCAA desires a system of intercollegiate athletics that, as much as is realistic, allows student-athletes to function as a part of the student body of their institution and to pursue academic opportunities without any serious hindrance as a result of their playing a Division I sport. More specifically, the provision includes a call to appropriately limit the amount of time required for participation in a sport and to create an environment that “encourage[s] academic success and individual development.”⁵⁹ Perhaps most importantly, the NCAA holds out several values as being significant in maintaining a commitment to promoting the interests and success of student-athletes: “fairness, sportsmanship, safety, honesty and positive relationships between student-athletes and representatives of [their] institution.”⁶⁰ Thus, the NCAA sets its sights on a collection of goals that it seeks to promote and effectuate via its legislation and the enforcement thereof—and (purportedly) two of the most prominent objectives and considerations that underlie the NCAA’s actions are maintaining an athletics system modeled upon amateurism and promoting the well-being of Division I student-athletes.

Finally, a brief note on the legislative process by which the NCAA gives effect to its purposes and goals may be helpful for understanding the way its

56 *Id.* § 20.9.1.3, at 368. Article II of the Division I Constitution, titled “Principles for Conduct of Intercollegiate Athletics,” also contains a “Principle of Amateurism” that makes clear that student-athletes are viewed as amateurs in their respective sports and that their participation in those sports is an “avocation.” *Id.* § 2.9, at 4. Article II as a whole contains even more information covering the purposes and principles that guide the NCAA in serving its role governing intercollegiate athletics.

57 *Id.* § 20.9.1.6, at 369. The well-being of student-athletes is also emphasized in article II, which notably includes provisions about fairness and ensuring that student-athletes are involved “in matters that affect their lives.” *Id.* § 2.2.6, at 3; *see also id.* § 2.2.5, at 3.

58 *Id.* § 20.9.1.6, at 369.

59 *Id.*

60 *Id.*

rules are created and enacted. The bylaws governing the legislative process appear in article 5 of the NCAA Constitution.⁶¹ There are a few different types of legislative provisions that depend on which group of institutions the legislation will apply to. First is the “Area of Autonomy” legislation.⁶² There are certain areas of legislation where the NCAA permits the so-called “Power Five” conferences in Division I—the Atlantic Coast Conference, Big Ten Conference, Big 12 Conference, Pac-12 Conference, and Southeastern Conference⁶³—the flexibility to create their own legislation so long as such legislation comports with the NCAA’s general purposes and principles and “advance[s] the legitimate educational or athletics-related needs of student-athletes and for legislative changes that will otherwise enhance student-athlete well-being.”⁶⁴ Area of autonomy legislation is the most narrow in scope, as the other categories of legislation may apply to only one NCAA division, multiple divisions, or all institutional members of the NCAA. “Dominant” provisions are those that apply to all NCAA members,⁶⁵ while “Division Dominant” provisions apply to all members of any one NCAA division,⁶⁶ and “Common” provisions apply to more than one NCAA division and must be separately adopted by each division.⁶⁷ Because this Note focuses on Division I transfer rules, the rules discussed may fall under the umbrella of any one of these types of legislation. Article 5 of the constitution also provides the procedure for Division I legislation, by which new rules and “amendments to amendments” can be proposed and accepted.⁶⁸ Proposed amendments are posted on the NCAA’s website so that the relevant member institutions can review them, and those institutions are free at that time to comment on the

61 *Id.* §§ 5.01–5.4.4.3, at 29–42.

62 *Id.* § 5.02.1.1, at 29.

63 Pat Forde, *Ranking All 65 Power Five Schools in Overall Athletic Success*, YAHOO! SPORTS (July 6, 2017), <https://sports.yahoo.com/ranking-every-power-five-school-overall-athletic-success-201918295.html>.

64 DIVISION I MANUAL, *supra* note 4, § 5.02.1.1, at 29. For more details as to the authority granted by areas of autonomy and the process for legislating within them, see *id.* § 5.3.2.1, at 33–35. The actual areas within which the Power Five conferences are permitted to adopt or amend legislation are as follows: athletics personnel; insurance and career transition; promotional activities unrelated to athletics participation; recruiting restrictions; preenrollment expenses and support; financial aid; awards, benefits, and expenses; academic support; health and wellness; meals and nutrition; and time demands. *Id.* § 5.3.2.1.2(a)–(k), at 33–34. The 2018–19 overview of the Division I autonomy legislative process is available on the NCAA’s website and provides an overview of deadlines along with some details regarding the general process by which autonomy provisions are proposed, commented on, refined, and ultimately voted on. *2018–19 NCAA Division I Autonomy Legislative Process*, NCAA (Sept. 5, 2018), http://www.ncaa.org/sites/default/files/2018-19DIGov_AutonomyLegislativeProcess_20180906.pdf [hereinafter *Autonomy Legislative Process*].

65 DIVISION I MANUAL, *supra* note 4, § 5.02.1.2, at 29.

66 *Id.* § 5.02.1.3, at 29.

67 *Id.* § 5.02.1.4, at 29.

68 *Id.* § 5.3.2.1.3.2, at 34.

proposals.⁶⁹ Proposals can also be sponsored by one of the Power Five conferences, in the case of autonomy legislation,⁷⁰ or by the Division I Board of Directors, Division I Council, or a conference in the case of “Council-Governance” proposals.⁷¹ Once the appropriate member institutions and Division I Council have reviewed the proposals, the Council can vote on those proposals for adoption.⁷² There are various voting processes by which the proposals that have made it through the comment and review period must pass through before adoption, depending on whether they represent legislation in an autonomy area or Council-governance area and on what kind of rule the proposal would be creating or amending (dominant, division dominant, etc.).⁷³ Once a proposal has been accepted for adoption, it will take effect and become a part of the Division I constitution or bylaws.⁷⁴ At the outset of article 5, the NCAA reminds us that all legislation governing member institutions must be “consistent with the purposes and fundamental policy [of the NCAA]” and must be designed to promote or advance the principles endorsed by the NCAA.⁷⁵ It is against this purposive and legislative backdrop that the NCAA and Division I institutions seek to establish a transfer system for Division I intercollegiate athletics.

69 *Id.* § 5.3.2.1.5–.6, at 35, § 5.3.2.2.4–.5, at 36.

70 *Id.* § 5.3.2.1.3, at 34.

71 *Id.* § 5.3.2.2.2, at 35. The “Council-governance” areas of legislation are simply those that fall outside the scope of the areas of autonomy of the Power Five conferences. See *Autonomy Legislative Process*, *supra* note 64 (“Decisions on whether a proposal should be placed in the [Division I] autonomy legislative process or NCAA Division I Council-governance legislative process are initially determined by NCAA staff . . .”). The Division I Council (“Council”) is “responsible for the day-to-day decision-making for Division I” and is made up of athletic directors, administrators, and student-athletes themselves. *Division I Council*, NCAA, <https://www.ncaa.org/governance/committees/division-i-council> (last visited Nov. 1, 2018). Numerous Division I Committees report and make recommendations to the Council, including the Division I Legislative Committee. See *Division I Committees*, NCAA, <https://www.ncaa.org/governance/committees?division=d1> (last visited Nov. 1, 2018); *Division I Legislative Committee*, NCAA, <http://www.ncaa.org/governance/committees/division-i-legislative-committee> (last visited Nov. 1, 2018). For more information about the role the Legislative Committee plays in the legislative process, see *id.*

72 See *DIVISION I MANUAL*, *supra* note 4, § 5.3.2.1.6, at 35, § 5.3.2.2.5–.6, at 36.

73 The voting procedure for proposals in Power Five conference areas of autonomy can be found in the *DIVISION I MANUAL*, *supra* note 4, § 5.3.2.1.7, at 35, while the procedure for Council-governance proposals is located at *id.* § 5.3.2.2.6, at 36. The voting requirements for dominant and division dominant proposals are governed by *id.* §§ 5.3.7–.3.8, at 38–39.

74 For a more detailed overview of the Division I legislative process, see NCAA, *HOW THE NCAA WORKS: DIVISION I* (2018), http://www.ncaa.org/sites/default/files/2018DINCAA-HowTheNCAAWorks-DI_20180313.pdf.

75 *DIVISION I MANUAL*, *supra* note 4, § 5.01.1, at 29.

B. Current Division I Transfer Rules

1. From the Permission-to-Contact Rule to the Notification-of-Transfer Rule

The NCAA's current Division I transfer rules recently went through a major change in the summer of 2018, when the NCAA's Division I Council opted to adopt a new rule proposed by the Division I Transfer Working Group for how the typical initiation of the transfer process would work for any given student-athlete.⁷⁶ Historically, Division I student-athletes who wanted to transfer to another Division I institution had to first obtain written permission from their current school's Athletic Director or another athletic administrator in order to communicate with other schools about potentially transferring.⁷⁷ If student-athletes did not first obtain that written permission, other schools were not permitted to encourage the student-athletes to transfer and could not offer athletically related financial aid "until the student-athlete has attended the second institution for one academic year."⁷⁸ Meanwhile, if that written permission was obtained, all of the normally applicable NCAA recruiting rules applied, meaning that student-athletes seeking to transfer could then be treated the same as any high-school student being recruited to play at a Division I school.⁷⁹ This effectively meant that school officials could deny student-athletes' requests for permission to contact certain schools that those school officials did not want the student-athletes to transfer to, whether for competitive purposes, out of spite, or for some other reason. As a result, school officials wielded a large amount of control over where the student-athletes could realistically transfer, given that a lack of permission meant that student-athletes could not be recruited by or communicate with coaches or officials from other schools. Moreover, the transferors could not receive athletically related financial assistance immediately upon transferring.

In an effort to bring increased transparency to the transfer process and to promote fairness,⁸⁰ the Division I Council adopted the new notification-of-transfer rule in June 2018, which took effect on October 15, 2018, officially doing away with the longstanding and controversial permission-to-contact rule.⁸¹ The notification-of-transfer rule allows Division I student-athletes to

76 Michelle Brutlag Hosick, *New Transfer Rule Eliminates Permission-to-Contact Process*, NCAA (June 13, 2018), <http://www.ncaa.org/about/resources/media-center/news/new-transfer-rule-eliminates-permission-contact-process>.

77 *Id.* This old rule is still reflected in the DIVISION I MANUAL, *supra* note 4, § 13.1.1.3, at 97–99. Because the *Division I Manual* covers the entire 2018–19 academic year, and the new notification-of-transfer rule did not become effective until October 15, 2018, the *Division I Manual* includes both the permission-to-contact rule, and the notification-of-transfer rule (under the "Delayed effective date" heading). *Id.* § 13.1.1.3, at 97–99.

78 *Id.*

79 *Id.* The NCAA Division I recruiting rules can be found at *id.* §§ 13.01–13.18, at 93–157.

80 See Hosick, *supra* note 76.

81 See *id.*

initiate the transfer process by simply providing his or her school with a written notice of intent to transfer.⁸² Once the student-athlete has provided that notification, the school has two days to place the student-athlete's name and information on a national transfer database.⁸³ As soon as the student-athlete's name appears on the transfer database, athletic officials from other schools are permitted to communicate with the student-athlete about a potential transfer.⁸⁴ This is a more straightforward and simplistic process, and many have viewed it as a positive move in the direction of fairness for student-athletes. However, this rule does not mean that student-athletes are completely free to transfer to any school they please; conferences may still restrict transfers within their own conference,⁸⁵ and many Division I conferences historically have done so.⁸⁶ Nonetheless, the notification-of-transfer rule is a major adjustment to the initiation of the transfer process and gives Division I student-athletes more control over when and where they can transfer.

82 DIVISION I MANUAL, *supra* note 4, § 13.1.1.3.1, at 98.

83 *Id.*

84 Hosick, *supra* note 76; see also Matt Norlander, *NCAA Approves Rule that Ends Coaches' Ability to Block Transfers*, CBS SPORTS (June 13, 2018), <https://www.cbssports.com/college-basketball/news/ncaa-approves-rule-that-ends-coaches-ability-to-block-transfers/> ("College athletes looking to leave one college for another will no longer have to get consent from their coach, athletic department or anyone else."). For a brief overview of the notification of transfer process directed at potentially transferring student-athletes, see NCAA, NOTIFICATION OF TRANSFER: WHAT DIVISION I STUDENT-ATHLETES SHOULD KNOW (2018), <http://www.ncaa.org/sites/default/files/di-saac-notification-transfer.pdf>.

85 See Norlander, *supra* note 84 ("Conferences still have the freedom to enact transfer restrictions. . . . [S]uch restrictions are common now and prevent athletes from moving within one conference.").

86 See Vinnie Duber, *Report: Hoosiers, Purdue Among Spike Albrecht's Transfer Options*, NBC SPORTS (Apr. 19, 2016), <https://www.nbcsports.com/chicago/big-ten/report-hoosiers-purdue-among-spike-albrechts-transfer-options> (discussing how even when a Big Ten Conference men's basketball coach gave a student-athlete permission to contact other Big Ten schools, the Big Ten itself was the final decisionmaker as to whether a student-athlete would be permitted to transfer intraconference); *Student-Athlete Handbook: Transfers*, U.N.C. AT CHAPEL HILL ATHLETICS, https://unc_ftp.sidearmsports.com/custompages/pdf/handbook/Transfers.pdf (last visited Oct. 19, 2018) (citing Atlantic Coast Conference (ACC) intraconference transfer rule that student-athletes who either were recruited by or received any athletically related financial aid from their current school must sit out for a year, losing that season of competition, if the student-athlete transfers to another school in the ACC); *Transfer Student-Athletes*, RUTGERS U. ATHLETICS, <https://scarletknights.com/sports/2017/6/11/compliance-transfer-student-athletes.html.aspx> (last visited Oct. 19, 2018) (providing Big Ten intraconference transfer rule that a student-athlete who has a signed financial aid agreement with a Big Ten school cannot transfer to another Big Ten school without first sitting out a year and that the student-athlete loses that year of eligibility, as well as noting that the "Big Ten intraconference transfer rule supersedes the NCAA transfer regulations"). The Southeastern Conference recently got rid of a rule that forced any graduate intraconference transfers to sit out one year before competing. See Alex Scarborough, *Under New Rule, SEC Graduates Can Transfer Within the Conference and Play Immediately*, ESPN (June 1, 2018), http://www.espn.com/college-football/story/_/id/23670817/under-new-rule-sec-graduates-transfer-conference-play-immediately.

2. General Overview of the Transfer Process and the Year-in-Residence Rule

Bearing the new notification-of-transfer rule in mind, the NCAA has numerous other requirements and rules for transferring student-athletes. The notification-of-transfer rule is simply one part of the overall process for a student-athlete currently enrolled at a Division I school seeking to transfer to another Division I institution. In order to fully complete the transfer process, the transferring student-athlete must satisfy other requirements, including applying to the admissions department at the new institution,⁸⁷ and maintaining continuing eligibility in his or her respective sport (in addition to maintaining transfer eligibility).

A threshold question is whether the student-athlete qualifies as a “transfer student-athlete.” Meeting any one of a number of conditions will establish that the student-athlete has achieved transfer status, such as (1) being a full-time student at a two- or four-year college during a nonsummer academic term, (2) practicing with a college team, or (3) receiving any financial aid from a college during summer school, among others.⁸⁸ As a general matter, student-athletes must also ensure that they will have initial eligibility at the new institution.⁸⁹ Meeting the Division I initial eligibility standards involves taking the requisite number of required high school courses, earning a minimum GPA in those “core courses,” and graduating from high school, among other requirements.⁹⁰ Division I student-athletes also are required to register with the NCAA’s Eligibility Center,⁹¹ which is responsible for monitoring incoming NCAA student-athletes⁹² for compliance with the NCAA Division I academic and eligibility standards.⁹³ Once these requirements have been sat-

87 Even if a student-athlete satisfies the NCAA’s transfer requirements, it does not necessarily mean that he will be able to transfer to another school. Such a transfer still must meet the academic institution’s own requirements, including academic standards for acceptance. See NCAA ELIGIBILITY CTR., 2018–19 GUIDE FOR FOUR-YEAR TRANSFERS 7 (2018), <http://www.ncaapublications.com/productdownloads/TGONLINE42018.pdf>.

88 *Id.* at 6. Additional conditions for being considered a transfer student-athlete can be found in the *Division I Manual*. DIVISION I MANUAL, *supra* note 4, § 14.5.2–.3, at 181–82.

89 NCAA ELIGIBILITY CTR., *supra* note 87, at 9–13; see also DIVISION I MANUAL, *supra* note 4, § 14.3, at 165–97.

90 NCAA ELIGIBILITY CTR., *supra* note 87, at 10–11. There is an additional requirement that the student-athlete earn a score on the SAT or ACT that “match[es] [the student-athlete’s] core-course GPA on the Division I sliding scale, which balances test scores and core-course GPA.” *Id.* at 11.

91 *Id.* at 13.

92 Registration with the NCAA Eligibility Center is only required for student-athletes who are seeking to transfer to Division I and II institutions. *Id.* Division III NCAA schools are in charge of setting their own academic and eligibility standards, so any student-athlete transferring to a Division III school does not need to register with the Eligibility Center. See *id.*

93 See NCAA Eligibility Center (Formerly NCAA Clearing House), NAT’L SCHOLASTIC ATHLETICS FOUND., https://www.nationalscholastic.org/ncaa_clearing_house (last visited Nov. 19, 2018) (discussing purpose and role of NCAA Eligibility Center).

ified, the student-athlete seeking to transfer may begin the notification-of-transfer process by providing his or her current institution's compliance office with a written notification of intention to transfer.⁹⁴ Once this process has begun, the student-athlete will be able to transfer to a new school as long as he meets the new school's own eligibility standards, and the new school will need to ensure that the student-athlete has remaining eligibility to participate in an NCAA sport.⁹⁵ However, simply completing the transfer process to the new school does not mean that the student-athlete will necessarily be immediately eligible to *compete* in their respective sport, oftentimes as a result of the operation of the now-controversial year-in-residence rule.

The year-in-residence rule requires any student-athlete who is transferring from a four-year institution to a Division I school to reside for one full academic year (either two full semesters or three full quarters) at his or her new institution before being eligible to participate in actual competition.⁹⁶ Student-athletes must be enrolled as full-time students during the entirety of this period or the time sitting out from competition will not contribute toward satisfying the year-in-residence requirement.⁹⁷ This required residence year still permits a transferring student-athlete to practice with his team and to receive financial aid as long as he satisfied the academic requirements when leaving the former institution.⁹⁸ There are various exceptions to this requirement that may allow a student-athlete to compete immediately after transferring,⁹⁹ including a scenario in which the student-athlete's current school publicly announces that it will be dropping the sport in which that student-athlete participates, or where the student-athlete has not partici-

94 It should be noted that the notification-of-transfer rule only applies to those transferring from a Division I institution. Student-athletes who are seeking to transfer from an NCAA Division II or III school must still request written permission from an authorized representative of their institution before contacting or being contacted by a member of another NCAA school, although the rules differ for student-athletes seeking to transfer from one Division III school to another. NCAA ELIGIBILITY CTR., *supra* note 87, at 14–15.

95 In general, at the Division I level, student-athletes have five calendar years to participate in four years of competition. *Id.* at 21. The five-year period begins to run upon enrollment as a full-time student at any two- or four-year institution, and it does not stop until the end of the five years, regardless of any redshirt year, any time the student-athlete spends sitting out in order to satisfy the year-in-residence requirement, or any time that the student-athlete takes off from school or is only a part-time student. *Id.* Student-athletes are only permitted to compete for a total of four seasons in any one sport and transferring to a new institution does not reset the total number of years of competition remaining for the transferring individual. *Id.*

96 DIVISION I MANUAL, *supra* note 4, § 14.5.5.1, at 185. The NCAA's stated underlying purpose behind the rule is to encourage the transferring student-athlete to focus on academics and transitioning to their new school and environment before competing in their sport. NCAA ELIGIBILITY CTR., *supra* note 87, at 16.

97 NCAA ELIGIBILITY CTR., *supra* note 87, at 16.

98 *Id.*

99 One of most significant of these exceptions, the so-called "one-time transfer exception," is discussed *infra* subsection I.B.3.

pated in the sport for a period of two years.¹⁰⁰ The NCAA can waive the required year out of competition,¹⁰¹ but the NCAA does not comment generally on why waivers are granted or not, and the waiver process has been criticized for inconsistency and a lack of transparency.¹⁰² While the year-in-residence rule has been at the center of controversy for years,¹⁰³ it remains a significant and important aspect for student-athletes who are considering a transfer.

3. The One-Time Transfer Exception

Perhaps the most prominent, and certainly the most well-known, of the exceptions to the year-in-residence requirement is the one-time transfer exception.¹⁰⁴ The exception permits a student-athlete who is transferring

100 See NCAA ELIGIBILITY CTR., *supra* note 87, at 18–20.

101 The residence requirement waivers are laid out in DIVISION I MANUAL, *supra* note 4, § 14.7.2, at 191. It is also possible for student-athletes to be granted a “[h]ardship [w]aiver” in certain circumstances, wherein they are granted an additional year of competition eligibility. *Id.* § 12.8.4, at 86–88. Waivers granting immediate eligibility have played an increasingly significant role in prominent transfers in Division I football in the last few years. See Stewart Mandel, *Justin Fields and the Advent of College Football Free Agency*, ATHLETIC (Feb. 8, 2019), <https://theathletic.com/808717/2019/02/08/justin-fields-ohio-state-ncaa-immediate-eligibility-college-football-free-agency/> (discussing the transfer of quarterback Justin Fields from the University of Georgia to The Ohio State University in 2019, Fields’s immediate eligibility as a result of a waiver, and how the NCAA’s more flexible approach to immediate eligibility waivers may create a “new form of free agency” in college football).

102 See Mechelle Voepel, *Transfers Remain Tricky but Ever-Growing Part of Women’s College Basketball*, ESPN (Nov. 4, 2017), http://www.espn.com/womens-college-basketball/story/_/id/21284147/transfers-remain-tricky-growing-part-women-college-basketball (“The NCAA doesn’t comment on [why transfer student-athletes are granted waivers] . . .”). Dawn Staley, the University of South Carolina head women’s basketball coach, had the following to say about the waiver-granting process: “The waiver thing . . . I really have no clue how they determine who gets it.” *Id.* (omission in original). For further discussion regarding the inconsistency of the NCAA’s granting of waivers, see John Infante, *Consistency, Fairness, and Transparency in NCAA Waivers*, ATHNET, <https://www.athleticscholarships.net/2013/09/06/consistency-fairness-and-transparency-in-ncaa-waivers.htm> (last visited Nov. 21, 2018).

103 The year-in-residence rule has drawn the ire of numerous commentators. See, e.g., Schafer, *supra* note 34, at 491–96; Joe Nocera, *With College Transfer Rules, Hypocrisy Never Sits Out a Year*, N.Y. TIMES (Apr. 1, 2016), <https://www.nytimes.com/2016/04/02/sports/ncaabasketball/with-college-transfer-rules-hypocrisy-never-sits-out-a-year.html> (comparing fact that student-athletes must sit out a year after transferring but college coaches do not have to sit out any time when switching jobs); Gary Parrish, *It’s Time for the NCAA to Eliminate All Restrictions on D-I Transfers*, CBS SPORTS (Sept. 20, 2013), <https://www.cbssports.com/college-basketball/news/its-time-for-the-ncaa-to-eliminate-all-restrictions-on-d-i-transfers/> (criticizing the inconsistency of the waiver process for waiving the year-in-residence requirement, as well as generally arguing for a more lenient transfer system in NCAA Division I sports); Zachary Zagger, *NCAA Transfer Rule Ripe for Reform Despite Court Success*, LAW360 (Mar. 13, 2018), (referencing the year-in-residence rule and the “several lawsuits” it has been involved in, especially on antitrust grounds).

104 DIVISION I MANUAL, *supra* note 4, § 14.5.5.2.10, at 187.

from a four-year institution to a Division I school to immediately participate in competition without sitting out for the normally required one year as long as: (1) the student-athlete is a participant in any sport other than baseball, basketball (either women's or men's), bowl-subdivision football, or men's ice hockey; (2) the student-athlete has not previously transferred from a four-year institution unless that previous transfer was a result of the previous school discontinuing or not sponsoring the student-athlete's sport; (3) the student-athlete, at the time of transfer, would have been academically eligible if he remained at the institution from which he is transferring; and (4) the student-athlete's prior institution provides written certification that it has no objection to the student-athlete being granted the exception.¹⁰⁵ The operation of the exception is fairly straightforward, but it has come under scrutiny because of the distinction it creates between the NCAA's revenue and non-revenue sports, as student-athletes who compete in any of the sports listed in (1) above are not able to use this one-time transfer exception to avoid sitting out a year after transferring. This has led to some suggesting that the NCAA's ultimate purpose behind the one-time transfer exception is to prevent "free agency in its most popular and profitable sports."¹⁰⁶ Thus, this exception is yet another transfer rule that the NCAA must consider as it strives to balance its own goals related to amateurism with the interests of student-athletes.

C. Normative Framework for Approaching the Transfer Problem

The overarching "General Principle" articulated in article 2 of the NCAA Constitution cautions that in order to best effectuate the NCAA's purposes and goals, sometimes "a delicate balance of . . . principles is necessary."¹⁰⁷ The necessity of values balancing is also noted in the "Commitment to Value-Based Legislation" subsection of "Commitments to the Division I Collegiate Model."¹⁰⁸ As discussed in Section I.A, the NCAA espouses numerous goals and guiding principles related both to the maintenance of a model of intercollegiate competition that is based upon a foundation of amateurism, and the creation of a system that adequately serves the interests of the student-athletes. All of article II of the NCAA Division I Constitution is devoted to articulating those overarching principles, and a quick perusal of the provisions of that article make clear the consistent thread of the general well-being of student-athletes, equity, and amateurism. Article II also includes a "Principle of Sound Academic Standards," which requires Division I institutions to

105 *Id.*

106 Schafer, *supra* note 34, at 493–94.

107 DIVISION I MANUAL, *supra* note 4, § 2.01, at 3. Article 2 of the NCAA Constitution specifically covers "Principles for Conduct of Intercollegiate Athletics" and discusses numerous broader guiding principles including the "Principle of Amateurism," discussed *supra* note 56 and accompanying text. *Id.* § 2.9, at 4.

108 *Id.* at Commitments to the Division I Collegiate Model ("In some instances, a careful balancing of these values may be necessary to help achieve the purposes of the Association.").

maintain academic policies and standards consistently for student-athletes and the general student body alike.¹⁰⁹ Commitment to this principle entails “proper emphasis on educational objectives,” such as graduation, and necessitates that collegiate athletic programs “be maintained as an important component of the educational program.”¹¹⁰ It is clear from the Division I Manual and NCAA Division I Constitution that the organization views these values as fundamental; thus, any rules or laws passed to govern NCAA Division I institutions should be carefully crafted by the Division I Council with such principles in mind. One should read the NCAA transfer regulations against that backdrop, and as a result, it is useful to establish a framework within which one can analyze the efficacy of the rules in light of the guiding principles of fairness to student-athletes, amateurism, and institutional academic control in Division I athletics. My goal here is not to critique or assess whether the NCAA *ought* to pursue or endorse amateurism, but rather to establish and utilize a framework that will help in determining whether a transfer rule, enacted or proposed, comports with and promotes these guiding principles.

As far as amateurism goes, in the context of transfer rules, one of the most significant concerns that bears on the NCAA and Division I institutions' minds is the potential for a free-agent market of transferring student-athletes. Free agency, as typically defined, inherently connotes professionalism—for instance, Merriam-Webster defines the term as “a professional athlete . . . who is free to negotiate a contract with any team.”¹¹¹ And college coaches have long voiced significant concerns with the potential of creating a free-agent market if the transfer rules are too lax. Scott Frost, head coach of the University of Nebraska football program, reacted negatively to the prospect of a no-restriction transfer system: “I think there’s been some proposals to make transfers free and never have to sit out. . . . [T]hat would be a disaster. . . . I think that’d get messy and ugly.”¹¹² The notion that a form of free agency would threaten amateurism in college sports cannot be neatly tied to any one particular concern, but some seem to stand out—namely, coaches’ fears that free agency will undermine both the stability of their rosters and programs,¹¹³ and also that it would encourage student-athletes to quit when the going gets tough when those coaches instead would want to see their players grow through adversity. Various prominent coaches have been vocal about the perceived negative impact that free agency would have on intercol-

109 *Id.* § 2.5, at 4.

110 *Id.* § 20.9.1.7, at 369.

111 *Free Agent*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/free%20agent> (last visited Nov. 23, 2018).

112 Dodd, *supra* note 12 (second omission in original); see also Gary Parrish, *Potential Change to Transfer Rule has College Coaches Spooked, Hypocritically*, CBS SPORTS (Sept. 7, 2017), <https://www.cbssports.com/college-basketball/news/potential-change-to-transfer-rule-has-college-coaches-spooked-hypocritically/> (quoting University of Alabama head football coach Nick Saban as saying: “How can you plan a roster or a team when every player is a free agent at the end of the season?”).

113 Dodd, *supra* note 12 (“Coaches are concerned about roster management.”).

legiate athletics—for example: “If we open this up, where it’s free agency, it’s going to change everything about our sport, which will be bad That part will be bad.”¹¹⁴ Another said: “There’s gotta be something [to ease the transfer restrictions] Just so it doesn’t become free agency in college football. That’s the thing I would worry about.”¹¹⁵ The list goes on.¹¹⁶ There also seems to be a concern with the integrity of recruiting, an issue the NCAA cares deeply about, as coaches have expressed worries that a no-holds-barred transfer regime would encourage other schools to engage in suspect recruiting efforts of potential transfer student-athletes.¹¹⁷ One commentator has specifically written about another potential implication of allowing a restrictionless transfer system: unionization by student-athletes in an effort to protect their rights against the NCAA.¹¹⁸ Such a result would go against the NCAA’s insistence that student-athletes are to be viewed primarily as students: “Student-athletes shall be amateurs in an intercollegiate sport, and their participation should be motivated primarily by education and by the physical, mental and social benefits to be derived.”¹¹⁹ It is neither an unreasonable nor implausible narrative that the loosening or relaxing of the NCAA’s Division I transfer guidelines could lead to something akin to, if not indistinguishable from, free agency.¹²⁰ And a free-agency system could certainly contribute to the deterioration of the model of amateurism that the NCAA wants to preserve, especially given the desire of the NCAA to maintain the (inaccurate or accurate) view of student-athletes as students, first and foremost. Permitting student-athletes to transfer without restriction could permit them to focus on a potential transfer decision with respect to athletics

114 Matt Tait, *Self Against the Idea of ‘Free Agency’ as NCAA Explores Changes to Transfer Rules*, KUSPORTS.COM (Sept. 19, 2017), <http://www2.kusports.com/news/2017/sep/19/self-against-idea-free-agency-ncaa-explores-change/>.

115 Barrett Sallee, *Michigan Coach Jim Harbaugh Details Concern About ‘Free Agency’ in College Football*, CBS SPORTS (Apr. 29, 2018), <https://www.cbssports.com/college-football/news/michigan-coach-jim-harbaugh-details-concern-about-free-agency-in-college-football/>.

116 See generally Evan Daniels, *NCAA Coaches Loudly Speaking Out on Potential Transfer Rule*, 247SPORTS (Sept. 6, 2017), <https://247sports.com/college/basketball/recruiting/Article/NCAA-coaches-loudly-speaking-out-on-potential-transfer-rule—107036402/>; Dodd, *supra* note 12; Parrish, *supra* note 112.

117 See Daniels, *supra* note 116 (“‘It would turn into one of the dirtiest recruiting periods that you’ve ever seen,’ [said] Indiana coach Archie Miller ‘Coaches will recruit players right after games and now you can go directly to the source, it would cripple teams and programs.’”).

118 Matthew R. Cali, Comment, *The NCAA’s Transfer of Power: An Analysis of the Future Implications the Proposed NCAA Transfer Rules Will Have on the Landscape of College Sports*, 21 JEFFREY S. MOORAD SPORTS L.J. 217, 240 (2014) (“Once student-athletes realize their power to freely transfer schools, just as a free agent does in professional leagues, they will decide to band together as a cohesive unit to protect their rights from being infringed upon and fight for more rights.”); see *id.* at 220, 240–44.

119 DIVISION I MANUAL, *supra* note 4, § 2.9, at 4.

120 See Mandel, *supra* note 101 (arguing that the “NCAA’s rapidly loosening restrictions on transfers” will lead to an “opening [of] the floodgates” and a “free-agency frenzy”).

only, especially when the student-athlete aspires to later play his sport in a professional league.¹²¹

The NCAA wants its student-athletes to focus on achieving a college degree: “Member institutions shall conduct their athletics programs for students who choose to participate in intercollegiate athletics as a part of their educational experience . . . thus maintaining a line of demarcation between student-athletes who participate in the Collegiate Model and athletes competing in the professional model.”¹²² Therefore, it would hardly be palatable for the organization to encourage the enactment of legislation that could or would threaten the integrity of its model of competition. Thus, whether a transfer rule will significantly encourage free agency can serve as a proxy for analyzing how such a rule may impact amateurism.

Great mental leaps are not required to understand the importance and interest the NCAA and its member schools have in promoting fairness to student-athletes. Treating others with fairness and equality is a paramount goal (or at least ought to be) of humanity in general. As the organization that effectively governs the eligibility and participation of student-athletes in collegiate athletics, the NCAA has a responsibility to keep the general welfare of its student-athletes in mind whenever it creates rules that can have a profound impact on those student-athletes during an important developmental period in their lives. As previously noted, the organization recognizes this obligation throughout the Division I Manual, as is particularly apparent in the sections on the Division I Collegiate Model and the NCAA’s purpose and guiding principles.¹²³ More specifically, the “Principle of Student-Athlete Well-Being” calls out the importance of supporting student-athletes’ educational experiences, protecting their health, and involving them in matters that affect their lives.¹²⁴ The “Commitment to Student-Athlete Well-Being” also encourages an environment that promotes “academic success and individual development” for student-athletes, as well one that “fosters fairness.”¹²⁵

Another important principle is that of equity. Equity is specifically mentioned in both the “Principle of Competitive Equity” in the Division I Constitution—which states the goal of promoting equal opportunities for student-athletes so that they are not “prevented unfairly from achieving the benefits

121 The NCAA is careful to make its student-athletes aware of how difficult it is to make it into professional sports, directly contrasting the statistics of participation in professional athletics with those of graduating with a degree from Division I institutions, thus continuing to reinforce its view that student-athletes are students seeking a degree first and athletics second. See *Estimated Probability of Competing in Professional Athletics*, NCAA, <http://www.ncaa.org/about/resources/research/estimated-probability-competing-professional-athletics> (last visited Nov. 23, 2018).

122 DIVISION I MANUAL, *supra* note 4, § 20.9.1.2, at 368; see also *id.* § 1.3.1, at 1.

123 These sections are discussed in greater detail *supra* notes 44–60 and accompanying text.

124 See DIVISION I MANUAL, *supra* note 4, § 2.2.1–.6, at 3.

125 *Id.* § 20.9.1.6, at 369.

inherent in participation in intercollegiate athletics”¹²⁶—and the “Commitment to Diversity and Inclusion,” which articulates equity as a core value of the NCAA.¹²⁷ In the context of transfer rules, student-athletes have a significant interest in where they attend school for a variety of reasons: proximity to family and friends, academics, sports, and feel or fit, to name just a few. Any rule that restricts a student-athlete’s ability to transfer to another program inherently takes away from that student-athlete’s autonomy to control both where he gets an education and where he plays his sport, regardless of the reason that the restriction exists. As a result, it is important that the NCAA and Division I rulemakers consider the impact that such transfer restrictions have on student-athletes as individuals, not just the impact those restrictions will have on college sports as a whole.

One such consideration is an equity comparison between student-athletes at Division I institutions and their nonathlete classmates. Many have questioned why student-athletes—particularly those in the revenue-generating sports who are considering the one-time transfer exception—are treated differently than other students at the same school. As Bill Self, head coach of the University of Kansas men’s basketball team, put it: “If you’re an engineering student at Kansas and you want to go to Missouri, you just go.”¹²⁸ This difference becomes especially glaring when a situation arises that could cause a regular student to seek a transfer, such as becoming homesick, developing career goals that are more favorable by being in a certain region, or having difficulty adjusting to life at the initial school. In such a situation, the regular student can transfer wherever they are accepted into another institution. Student-athletes, meanwhile, must satisfy all NCAA requirements for transfer if they wish to continue competing at the Division I level. And even if they do meet these requirements, many of them will have to wait an entire year to compete. In fact, if the NCAA is primarily concerned with the graduation of its student-athletes and their attainment of college degrees, it can be argued that those student-athletes ought to have an appropriate level of control over where they are earning their degree.

For example, one can imagine a situation where a college basketball player, upon realizing that making the NBA or WNBA is not especially realistic, wants to earn a degree in a certain program that that student-athlete’s current institution does not offer. But that student-athlete must generally sit out a year from participating in competition if he or she transfers to a different school. This creates an obvious asymmetry between student-athletes and regular students, which calls into question the NCAA’s assertion that the organization wants student-athletes to be “an integral part of the student body” with a “clear line of demarcation between intercollegiate athletics and professional sports.”¹²⁹

126 *Id.* § 2.10, at 4.

127 *Id.* § 20.9.1.9, at 369.

128 Tait, *supra* note 114.

129 DIVISION I MANUAL, *supra* note 4, § 1.3.1, at 1.

Simply looking at the difference in the transfer rules for regular students versus student-athletes might lead one to argue, instead, that there is actually a clear line of demarcation between those regular students and student-athletes. As one school administrator has said: "You're treating the student-athlete different than everybody else on that campus."¹³⁰ While student-athletes may have access to certain benefits that regular students do not, the question becomes: Just how far is it fair to restrict transfer student-athletes in the name of maintaining amateurism?

Further equity concerns arise when coaches are brought into the mix. First of all, coaches are (subject to their own contract limitations) free to leave a school and coach at another. The NCAA does not levy any penalty on those coaches for switching schools.¹³¹ Thus, there is an inequity between coaches and players in NCAA Division I sports. While this asymmetry could be justified on the grounds that coaches are employees and the NCAA strictly enforces the view that student-athletes are nothing of the sort, it does create problems when the very coaches who recruited players leave that school.¹³²

If the student-athlete loses the person they were not only recruited by but perhaps feel most comfortable with at the school, that student-athlete may feel justified in seeking a transfer, especially if there were other options that were preferable for some other reason like geography, academics, or family. This asymmetry creates further equity concerns on behalf of potential transfer student-athletes. Accounting for this variety of considerations, the NCAA must analyze the potential pitfalls of any transfer rule on student-athletes' well-being and their ability to have the autonomy and empowerment to make the decisions that they deem best for themselves. At the heart of this analysis must be fairness, with the goal being to strike a balance between the interests the NCAA has in reasonably restricting transfers so as to prevent full-on free agency in college sports and the interests student-athletes have in being involved in "matters that affect their lives,"¹³³ to use the NCAA's own language.

Finally, an oft-neglected consideration in shaping the NCAA transfer rules is that of institutional autonomy over academics. The manner in which a Division I institution structures its admission standards, academic progression, and graduation or degree requirements may implicitly be impacted by any rule controlling student-athlete transfers, especially when considering how important athletics can be at numerous Division I schools. As a baseline, institutions must be able to have full autonomy over their academic pro-

130 Dodd, *supra* note 12.

131 See Parrish, *supra* note 112 (discussing how coaches at smaller Division I schools often move up to higher level programs when the opportunity arises, without penalty, and arguing that student-athletes should be permitted to do the same).

132 See Dodd, *supra* note 12 ("When you go to the school, it's the coaches that come out to recruit you [to] bring you to that school . . . You want to pick the school for the school, but [the coach is] where you go to for your help if you're struggling. You want to talk to your coach. That's who you're most comfortable with." (second alteration in original)).

133 DIVISION I MANUAL, *supra* note 4, § 2.2.6, at 3.

grams, especially if the NCAA is to maintain that the role of the student-athlete at Division I programs is student first and athlete second. Clearly, institutions have an immense interest in structuring their own courses of study, degree requirements, and general academic standards. When transfer rules begin encroaching on that basic institutional control, they threaten to have a vastly more far-reaching impact than simply that of how and when student-athletes may transfer and when those student-athletes will have athletic eligibility. Again, the NCAA requires its Division I member institutions to place “proper emphasis on educational objectives,”¹³⁴ a goal that will be substantially hindered if schools are essentially encouraged by transfer rules to alter academic programs in order to promote athletics. And institutions are cognizant of this goal—as Rev. John Jenkins, president of the University of Notre Dame, has stated, “[o]ur relationship to these young people is to educate them.”¹³⁵ Jenkins further articulated the precedence that academics ought to take over athletics: “[Schools are] educational institution[s], and athletics, while diverting and instructive in its own right, is meant to serve the educational purpose.”¹³⁶ This view comports with the NCAA’s own guideline that “[i]ntercollegiate athletic programs shall be maintained as an important component of the educational program.”¹³⁷ With these principles in mind, it is important for the NCAA to design its transfer rules in a way that avoids forcing institutions to make certain academic decisions that they would not otherwise make. This does not necessarily require that the transfer rules actually *promote* institutional autonomy—only that the rules do not *impede* the inherent control that institutions must be able to have over academics. Thus, institutional autonomy is a third major element for the NCAA to weigh when it is crafting its transfer rules.

In light of the importance to the NCAA of amateurism and student-athlete well-being, and the value of academic autonomy to institutions, a three-pronged balancing analysis serves as the most useful and appropriate approach in determining whether a transfer rule is sensible and tailored to serving the NCAA’s goals without going so far as to unfairly restrict student-athletes in making important life decisions for themselves. Thus, when taking a closer look at an existing or proposed transfer rule for NCAA Division I sports, one should ask the following questions: (1) is the rule tailored in a way that it can be reasonably expected to prevent the creation of a free agency that might threaten the model of amateurism that the NCAA seeks to maintain; (2) is the rule fair to student-athletes, or does it impose a burden on student-athletes that is not commensurate with or exceeds the NCAA’s concern and interest in maintaining that amateur model; and (3) does the

134 *Id.* § 20.9.1.7, at 369.

135 Dan Barry, *Notre Dame President Stands Firm Amid Shifts in College Athletics*, N.Y. TIMES (Sept. 10, 2015), <https://www.nytimes.com/2015/09/11/sports/ncaafootball/notre-dame-president-stands-firm-amid-shifts-in-college-athletics.html>.

136 *Id.*

137 DIVISION I MANUAL, *supra* note 4, § 20.9.1.7, at 369.

rule unreasonably influence the control institutions have in terms of academic standards and requirements?

II. APPLYING THE FRAMEWORK: RECENT TRANSFER PROPOSALS AND FUTURE CONSIDERATIONS

A. *Applying the Framework to Recent Transfer Rule Proposals*

The NCAA's Transfer Working Group (TWG) recently proposed four new transfer rules or amendments to be considered in the 2018–19 NCAA legislative cycle.¹³⁸ In Section II.A, this Note analyzes each of the four proposals under the above-suggested framework to give an idea of the analysis that this Note recommends when attempting to assess the strength and efficacy of various transfer rules and proposals for serving the dual purposes of promoting an amateur model of intercollegiate athletics and accounting for fairness to student-athletes, without interfering with institutional autonomy.

1. Proposal I

The first proposal is the one that seems most likely to get attention, as it pertains directly to one of the most common arguments against the current Division I transfer rules. If enacted, the rule would permit a student-athlete, who already enrolled in summer school at his institution and who has received athletics financial aid, to transfer, if his head coach leaves the school for any reason before the first day of fall classes, provided that he has not previously enrolled as a full-time student in a regular term at a collegiate institution.¹³⁹ The stated rationale for this rule indicates that the TWG feels that the rule would be “fair and promote[] student-athlete well-being.”¹⁴⁰

Applying the first prong of the framework, we ask whether the proposed rule is crafted such that it can be reasonably expected to prevent free agency. This rule is more geared toward lessening some of the harshness of the year-in-residence rule in a specific but not uncommon circumstance: however, the NCAA must still consider the potential impact that loosening the traditional transfer restrictions in this manner may have on amateurism. In the case of this proposal, it seems unlikely that the rule would operate in a way that would encourage the wave of transfers that a broader rule might. Importantly, it generally seems to be the case that college coaches are either fired or choose to take a new job well in advance of the summer term since, for most sports, the season ends before the summer term begins. And in most

138 Michelle Brutlag Hosick, *DI Council Introduces Transfer Legislation*, NCAA (Oct. 5, 2018), <http://www.ncaa.org/about/resources/media-center/news/di-council-introduces-transfer-legislation>.

139 NCAA Division I Council, Transfer Working Group, *Academic Eligibility—Exceptions for Transfers from Four-Year Colleges—Head Coach Departure Prior to Initial Full-Time Enrollment Exception* (NCAA Proposal No. 2018-104, 2018), <https://web3.ncaa.org/lsdbi/search/proposalView?id=103292> [hereinafter Division I Proposal 2018-104] (proposing to amend section 14.5.5.2); see Hosick, *supra* note 138.

140 Division I Proposal 2018-104, *supra* note 139.

cases, schools would likely prefer to have a new coach installed as soon as possible. A coach leaving abruptly before the fall semester starts would be the exception rather than the rule. Additionally, this rule would not broadly impact all Division I sports. Rather, it would apply to student-athletes participating in one of the revenue sports: baseball, men's ice hockey, basketball, or football.

But eligible student-athletes in other Division I sports have the option of the one-time transfer exception for their first transfer. Since this proposed exception to the year-in-residence rule would only be available for student-athletes who have not enrolled full-time before, in general any student-athlete participating in a nonrevenue sport would have the one-time transfer exception available to transfer for any reason, including if their coach left and they wanted to transfer as a result of that.¹⁴¹ Thus, as a general matter the use of this proposed rule would be less common for nonrevenue sport student-athletes, which limits the overall pool of potential transfers.¹⁴² As a result, the NCAA and its Division I institutions need not have great concern that enacting this proposal would lead to a significant increase in the number of student-athletes transferring between Division I schools due to their coaches leaving before the beginning of the fall term. It follows that this proposal would not seriously threaten the NCAA's desired model of amateurism.

Applying the second prong, we ask whether this proposal is fair to student-athletes. Again, this rule was proposed with student-athlete well-being in mind, and was targeted at a specific issue that has been at the forefront of arguments in favor of relaxing the Division I transfer restrictions: the departure of a coach.¹⁴³ This prong is satisfied in this case. Because revenue sport student-athletes do not have the one-time transfer exception available to them, this proposal gives them the option to transfer without having to sit out if the coach who recruited them leaves before they actually enroll full-time at the school. As the TWG articulates in its rationale for the proposal, "[t]he head coach is a major variable in the recruitment process and the choice a student-athlete makes regarding where to attend college and participate in athletics."¹⁴⁴ If a head coach leaves before the student-athlete even has time to settle in at his new school, that student-athlete may have lost one of the most, if not the most, significant reasons for choosing that school. This pro-

141 Recall, however, that one of the requirements for use of the one-time transfer exception is that the student-athlete's prior institution provide written approval of the grant of the exception. See *supra* notes 104–06 and accompanying text. Thus, while student-athletes participating in nonrevenue sports have the one-time transfer exception available, they will not always necessarily be granted an exception. As a result, this proposed rule could be used by a nonrevenue student-athlete whose school denied their one-time transfer exception but whose coach left before the fall semester began.

142 See *Transfer Rate Averages and Trends*, NCAA, <http://www.ncaa.org/about/resources/research/transfer-rate-averages-and-trends> (last visited Nov. 24, 2018) (reflecting the transfer rates for Division I sports in 2017).

143 See *e.g.*, Dodd *supra* note 12; Parrish *supra* note 112.

144 Division I Proposal 2018-104, *supra* note 139.

posed rule seems like a natural, obvious, and fair solution to this issue—rather than essentially punishing a student-athlete for choosing a school and then having the head coach who recruited him leave for reasons completely out of the student-athlete's control, it provides student-athletes who have not had time to develop a comfort zone or other reasons to stay an option to transfer to a school that is a better fit without incurring the year out of competition.

Finally, in applying the third prong, the question is whether the proposed rule would unreasonably impede institutional autonomy over academic programs. This first proposal does not seem to have any significant bearing on this prong of the analytical framework. This proposal does not appear to create any real incentive for institutions to alter their academic programs or degree requirements for athletics purposes. As a result, if enacted, the rule does not seem as though it would seriously threaten institutional autonomy. Thus, this proposal, having applied the framework, appears sound under all three prongs and strikes an effective balance between fairness to student-athletes and maintaining enough control over transfers so as to not create a free-agent frenzy.

2. Proposal II

The TWG's second proposed amendment would create another exception to the year-in-residence rule, so long as the transferring student-athlete satisfies one of two conditions: (1) the student-athlete was not recruited by the previous institution, which does not provide athletically related financial aid in the sport; *or* (2) the student-athlete was a walk-on (did not receive any athletically related financial aid) at the previous institution, which provides athletically related financial aid in that sport.¹⁴⁵ This proposal is, like the one discussed above, targeted at fairness to student-athletes, as the TWG's rationale articulates that nonrecruited or nonscholarship student-athletes "should be permitted to explore other athletics and academic opportunities without being required to fulfill an academic year of residence at another institution" after transferring.¹⁴⁶

Beginning with the first prong of the analytical framework, it might be useful to consider the total number of walk-ons and nonrecruited student-athletes in Division I sports. While available statistics regarding the number of nonrecruited Division I student-athletes are sparse, recent data from the NCAA suggest that roughly forty-one percent of student-athletes in Division I athletics programs do not receive any athletically related financial aid, and thus can be classified as "nonscholarship" student-athletes within the mean-

145 NCAA Division I Council, Transfer Working Group, *Academic Eligibility—Exceptions for Transfers from Four-Year Colleges—Nonrecruited or Nonscholarship Exception* (Proposal No. 2018-103, 2018), <https://web3.ncaa.org/lstdbi/search/proposalView?id=103296> [hereinafter Division I Proposal 2018-103] (proposing to amend section 14.5.5.2); *see* Hosick, *supra* note 138.

146 Division I Proposal 2018-103, *supra* note 145.

ing of this proposed rule.¹⁴⁷ That is a substantial number of student-athletes, representing about 73,000 individuals. Thus, unlike the first proposal, the potential pool of transfer student-athletes being impacted by this proposal is fairly significant. Nonetheless, the NCAA and Division I schools still could be fairly confident that enacting this exception would not have a substantially deleterious effect on amateurism and no free-agent market would result. The predominant reason for this is that the concerns about recruiting student-athletes who are still at other schools would be significantly lower, as in most cases, nonscholarship and nonrecruited student-athletes are not the ones who would be most highly sought after. If a student-athlete is very talented or noticed when in high school, it is very likely that Division I schools would both recruit and provide him with athletically related scholarships. Nonscholarship and nonrecruited student-athletes also can earn athletically related scholarships later in their academic careers,¹⁴⁸ which would take them outside the scope of this exception and would alleviate concerns about recruitment of potential transfer student-athletes by other institutions. Further, and perhaps more significantly, because nonscholarship and nonrecruited athletes are not incentivized to attend an institution because of athletically related financial aid or recruitment, these student-athletes generally will select schools that are better suited to their needs and desires for reasons other than athletics. As a result, it is reasonable to conclude that this class of Division I student-athletes may be less likely to transfer than would scholarship or recruited student-athletes, alleviating some of the concerns that this proposed amendment would lead to increased free agency in college sports. Thus, this second proposal appears to generally comport with the amateur model.

On the fairness front, this proposal, like the first, would provide certain student-athletes with more flexibility and control in transfer situations. The initial question one might ask could be: What justifies granting this exception from sitting out a year to nonrecruited and nonscholarship student-athletes, but not to other student-athletes? The proposal does make sense in light of the commitment that scholarship and recruited student-athletes and their institutions make to one another. When Division I schools recruit student-athletes, they are demonstrating an interest in that individual both athletically and academically. And when those schools actually offer athletically related financial aid to student-athletes, the institutions are demonstrating a commitment to help pay for the student-athletes' education and other expenses. When student-athletes accept such aid, they are also committing to that institution to some extent.

Nonscholarship and nonrecruited student-athletes are not tied to institutions in quite the same way—while they are just as much a part of any Divi-

147 See NCAA, NCAA RECRUITING FACTS (2018), <https://www.ncaa.org/sites/default/files/Recruiting%20Fact%20Sheet%20WEB.pdf>.

148 See Tom VanHaaren, *Best of Walk-On Scholarship Reveals*, ESPN (Aug. 21, 2018), http://www.espn.com/sportsnation/story/_/id/24435943/best-walk-scholarship-reveals (providing videos of former walk-on student-athletes being granted a scholarship).

sion I athletics program as a scholarship or recruited student-athlete is, the school has not demonstrated the same degree of commitment to the class of individuals targeted by this proposal. Because the schools do not have the same financial commitment to these walk-on student-athletes, it appears only fair to allow such student-athletes to transfer schools without having to sit out for a year in residence, especially considering that walk-ons may have made their decision on what school to attend primarily for reasons other than athletics. All things considered, while one could argue that the distinction between walk-ons and scholarship or recruited student-athletes does not justify granting one group this exception but not the other, this proposal is still a move in the right direction for fairness and in the interest of student-athlete well-being in the Division I transfer context.

In terms of institutional autonomy, this proposal, like the first, does not put Division I institutions in a difficult position regarding the structure of academic programs. The category of student-athletes targeted by this proposal have not received any financial commitment from the institution. It thus appears that institutions do not have any special reason to tailor academic standards or programs in a way that will best suit the transfer proposal here. As a whole, this proposal seems reasonably designed to increase fairness to at least some student-athletes without creating any significant risk of free agency, and it avoids obstructing institutions' ability to control their academics.

3. Proposal III

The third proposal targets the graduate-transfer rule in basketball and football specifically. The proposal's intent reads as follows:

In [either men's or women's] basketball and football, to specify that a graduate transfer student-athlete who receives athletically related financial aid and enrolls at the certifying institution with one season of eligibility remaining shall be a counter for two academic years; further, to specify that if a graduate transfer student-athlete successfully completes all degree requirements prior to the start of his or her second academic year of enrollment, he or she shall not be considered a counter for the subsequent academic year.¹⁴⁹

Essentially, the idea behind this rule is to discourage free agency of graduate transfers by imposing a penalty on Division I institutions in the form of counting any graduate transfer's scholarship against the total number of scholarships a Division I basketball or football team has for two full years, *even if* the graduate transfer runs out of eligibility after only one season, unless that student-athlete achieves his or her degree before the second year.

149 NCAA Division I Council, Transfer Working Group, *Financial Aid—Maximum Institutional Grant-in-Aid Limitations by Sport—Counters—Basketball and Football—Graduate Transfers* (Proposal No. 2018-106, 2018), <https://web3.ncaa.org/lstdbi/search/proposalView?id=103298> [hereinafter Division I Proposal 2018-106] (proposing to amend section 15.5.1); *see also* Hosick, *supra* note 138.

Unlike the first two proposals, this one was made with the free-agency concerns related to graduate transfers in mind.¹⁵⁰ Indeed, the TWG's rationale for the proposal notes the growing number of graduate transfers and states that it "seeks to achieve greater institutional accountability" while also promoting student-athlete well-being.¹⁵¹

The analysis for the first prong of the framework is straightforward for this proposal, as it appears clear enough that the operation of the rule would work to prevent or at least somewhat mitigate the free-agency concerns that come along with the graduate-transfer rule. Because basketball and football have two of the highest number of graduate transfers in Division I annually,¹⁵² this proposal is aimed at the sports that Division I schools are most likely to seek to capitalize on by using the graduate-transfer rule. As the transfer rules currently stand, the graduate-transfer rule provides perhaps the closest thing to a limitless transfer system that could lead to free agency, since graduate student-athletes who retain eligibility are free to transfer without any NCAA restrictions on their ability to play immediately. Recall, though, that Division I conferences *can* restrict intraconference transfers. The growing number of graduate transfers, as previously discussed,¹⁵³ has created a bona fide concern that Division I schools will compile lists of prospective transfer student-athletes and begin recruiting those potential transfers before the actual transfer process has begun.

As student-athletes in basketball and football utilize the graduate-transfer rule to compete at a new school for their final season of eligibility at increasing rates, it becomes difficult to draw the line between a pure system of free agency and transferring graduate student-athletes. As it currently stands, graduate student-athletes can basically make their previous institution aware that they intend to transfer, and then can go visit new schools and be recruited without any real limitation. Again, I am not assessing whether or not this is a good thing—I am simply taking for granted that amateurism is a desirable quality of NCAA Division I sports, and that permitting full-on free agency could hinder the goal of maintaining an amateur model. With that said, if left untouched, it is plausible that the graduate-transfer rule could create a free-agent market of sorts for graduate student-athletes. This proposal would make Division I institutions think harder about going all out in their pursuit of graduate transfers, as they would have to consider the impact that adding a graduate transfer would have on their total number of scholarships available if that graduate transfer did not earn a degree within one year of transferring. Having a scholarship count against the total number available, when the student-athlete for whom the scholarship was given cannot even compete, would be something that a school would have to seriously weigh. It would be an effective deterrent to schools that might otherwise

150 The graduate-transfer rule, and some of the concerns and issues surrounding it, are discussed *supra* notes 9–20 and accompanying text.

151 Division I Proposal 2018-106, *supra* note 149.

152 *Prevalence of Graduate Transfer in Division I*, *supra* note 8.

153 See *supra* notes 9–20 and accompanying text.

seek to add as many graduate transfers as possible, and as currently proposed, it is tailored to serve the goal of controlling or mitigating the potential for free agency that could damage the amateur model as a result of the graduate-transfer rule.

Assessing the fairness prong is interesting for this proposal, because unlike the previous two proposals, it does not directly bear on student-athletes' ability to control their transfers. Certainly, if enacted, the proposal could indirectly make it more difficult for graduate student-athletes to transfer in the sense that it would probably make schools think twice before adding a graduate transfer. On the flip side, though, the proposal would encourage the schools to help the student-athlete finish the requirements for his graduate degree in an expeditious manner, since the graduate transfer's scholarship will not count against the school's total if the student-athlete completes all degree requirements before his second year of enrollment. Additionally, the rule does not directly limit or restrict student-athletes' ability to transfer, as the graduate-transfer rule itself is still in play and would be able to be utilized even if the proposal were enacted. Ultimately, this proposal seems like a creative way to curb the potential trend toward free agency for graduate transfers without seriously hampering the well-being of those student-athletes, and perhaps in some ways it actually encourages fairness and the educational success of those student-athletes.

The third prong, however, is where this proposal raises concerns. Unlike the previous two proposals, this proposal creates a significant risk of inhibiting institutional autonomy in the academic context. Again, this rule would effectively create a penalty for institutions if they take on a graduate transfer in football or basketball and that graduate transfer does not satisfy degree requirements before the beginning of the second academic year of enrollment. It is not difficult to see how the existence of this scholarship penalty could incentivize schools to take measures to avoid the penalty at the expense of ordinary academic objectives. For example, one major concern would be that schools could seek to establish one-year graduate programs or one-year certificate programs that they would not otherwise have created. Graduate transfers could enroll in those programs, satisfy the requirements for the certificate or degree in one year, and then the school would not have to count the student-athlete's scholarship for the second year.

This is perhaps as clear an example of interference with institutional autonomy as there could be in the context of transfer regulations. If a school creates an entire program or course of study that can be finished within a year directly as a result of a transfer rule that governs student-athletes, the school is not acting with pure autonomy—it is being implicitly guided by the interfering rule in shaping its academics. Rather than developing degree structures and standards for purely academic purposes, an institution under the thumb of this rule might be compelled to develop entirely new degree programs for little purpose other than to give graduate-transfer student-athletes an option that would not hurt the institution's athletic programs one

year after the transfer. Thus, this rule presents serious concerns in terms of institutional academic control.

On the whole, this proposal would likely manage to mitigate some of the concerns regarding free agency raised by the current effects of the graduate-transfer rule without being unreasonably unfair to student-athletes who are seeking to transfer. The trouble with this proposal reveals itself when considering the impact that the rule could have on institutional autonomy, and that should give pause to the NCAA when determining whether to enact the proposal. While the balancing of all three prongs of this framework is of course no simple task, when institutional autonomy is as clearly challenged as it is by this proposal, the NCAA must ask itself how it can best serve not only its own purposes and the interests of student-athletes, but also the academic interests of its Division I institutions. Thus, under the framework, this proposal has some appeal in terms of fairness and prevention of free agency, but it may need to be reworked if the NCAA wants to allow its member institutions to maintain academic integrity.

4. Proposal IV

The final of the four proposals seems to be the least impactful as far as the overall scope of the suggested amendment goes. The goal of the proposed rule would be to effectively make a student-athlete sit out for a year after transferring, even if he qualifies for an exception to the year-in-residence rule, if that student-athlete has competed “during the same academic year in the sport at the previous four-year institution.”¹⁵⁴ The TWG’s goal here is to bring uniformity across sports and make the current rule less complex, as the current rule creates an asymmetry as far as participation in the same season goes depending on which sport a student-athlete is participating in.¹⁵⁵ The suggested framework’s application to this proposal may be less useful, since the amendment’s goal does not appear to focus directly on either the potential for free agency to seriously damage the amateur model or the general well-being of Division I student-athletes. It also does not appear to have any significant impact on institutional control. This caveat notwithstanding, it may still help to analyze this final proposed transfer amendment to consider if it might have any tangential impact on any of the three elements under the framework.

For the first prong, the rule that the proposal would amend does not appear to have any noteworthy bearing on potential free agency. The sports that are currently out of sync and that would permit student-athletes to par-

154 NCAA Division I Council, Transfer Working Group, *Academic Eligibility—Transfer Regulations—Four-Year College Transfers—Competition in Year of Transfer* (Proposal No. 2018-105, 2018), <https://web3.ncaa.org/lstdbi/search/proposalView?id=103294> [hereinafter Division I Proposal 2018-105] (proposing to amend section 14.5.5.3); see also Hosick, *supra* note 138.

155 See Division I Proposal 2018-105, *supra* note 154 (“This proposal creates uniformity for all sports, is consistent with the principle of fair competition, and may encourage more responsible recruiting practices between coaches and prospective student-athletes.”).

ticipate in meaningful competition that impacts championship eligibility for two different institutions during the same academic year—e.g., golf, swimming and diving, and track and field¹⁵⁶—are sports that do not make up a large number of the overall transfer student-athletes annually.¹⁵⁷ Most student-athletes who transfer also do not transfer during the academic year, or if they do, it does not appear to be the case that many such student-athletes attempt to participate in their sport at the new school in the same academic year, especially in the case of revenue-generating sports. Permitting a student-athlete to transfer to a new school and *immediately* participate in a sport when he already had participated in that sport at the previous institution would certainly seem like professional free agency. But that is not how the current rule operates, as participation in the same academic year for two different schools by a transfer student-athlete is not permitted in a number of sports, including football, basketball, baseball, and men's ice hockey.¹⁵⁸ Thus, as currently constructed, there does not seem to be a significant risk of harm to amateurism as a result of student-athletes transferring to a new school and playing in the same sport for two schools during the same academic year. The proposed amendment would simply make the current rule consistent across Division I sports.

On the fairness prong, the proposal and current rule both seem reasonably tailored to preventing something that would be very much akin to free agency if student-athletes at Division I institutions were able to transfer to another school and play in a sport they had already participated in during that academic year. Again, most transfer student-athletes would wait to transfer until after the conclusion of their athletic season, if for no reason other than to maximize their eligibility, and thus the rule likely does not have an impact on a broad pool of Division I student-athletes. Additionally, this proposal does not force student-athletes to sit out a season under the year-in-residence rule; it simply mandates that if a student-athlete transfers during the course of the academic year, he will not be able to compete at his new school until the following academic year. It is likely a rare case that a transfer student-athlete cannot wait to transfer and compete until after the athletic season at the previous institution ends, and if such an instance were to occur, the student-athlete could always apply for a hardship waiver.¹⁵⁹ The proposed expansion of the current rule to make it consistent across sports does not appear likely to infringe significantly on student-athlete well-being. Nor is the proposal disproportionately burdensome on transfer student-athletes, given the NCAA's interest in maintaining a system of college athletics that does not involve free agency.

Finally, this rule has no obvious impact on institutional autonomy. It involves no academic standards, scholarships, or other requirements for student-athletes, and it is entirely focused on eligibility for same-year, same-sport

156 *Id.*

157 *See Transfer Rate Averages and Trends*, *supra* note 142.

158 *DIVISION I MANUAL*, *supra* note 4, § 14.5.5.3, at 188.

159 *Id.* § 12.8.4, at 86–88.

transfers. Thus, the rule does not threaten institutional control of academics. Altogether, this proposal generally comports with all three prongs of the framework, and though its impact on those goals is less clear than the other three proposals, it is still important for the NCAA to keep fairness to student-athletes and institutional autonomy in mind as it seeks to control potential free agency.

B. *The Future of the One-Time Transfer Exception*

Finally, this Section will very briefly touch on some considerations and issues surrounding the one-time transfer exception, a rule for which the TWG did not make any proposed amendments. One of the greatest issues some commentators have with the one-time transfer exception is that it is only available to sports other than baseball, basketball, football, or men's ice hockey—in other words, the sports that generate the most revenue.¹⁶⁰ Some have called for the exception to be extended such that it would be available to all sports,¹⁶¹ while others have argued that the exception should not be available to anyone. Mike Krzyzewski, the head coach of the Duke University men's basketball program, simply wants consistency across Division I sports, whichever direction that consistency is: "There should be no exceptions Everybody should have to sit out . . . just to make it equal. . . . If [the NCAA wants] to let everybody play right away [after transferring], then let everybody play right away Everybody should be treated the same."¹⁶² The primary drive behind some resolution for the one-time transfer exception is not only a desire for consistency, but also to resolve the confusion as to why the distinction exists at all. Recall the discussion regarding equity in Section I.C: if the NCAA is seeking to create an equitable system, it must consider equity between student-athletes across all sports, as well as between programs and institutions. The one-time transfer exception, as currently constructed, creates an asymmetry between Division I student-athletes participating in revenue-generating sports and those student-athletes competing in nonrevenue sports. In order to maintain a system that is fair to student-athletes regardless of sport, the NCAA is going to have to address the one-time transfer exception one way or another.

A natural follow-up question is: If the NCAA were to do away with the exception, how exactly would the organization deal with transfer student-athletes? Should there be some kind of neutral or objective principle, such as a grade point average (GPA) threshold above which transfer student-athletes would not have to sit out a year, but below which they would? The Division I Transfer Working Group has previously considered such a measure,¹⁶³ but

160 See Schafer, *supra* note 34, at 493–94 ("The One-Time Transfer Exception shows the true rationale behind the Year in Residence Rule: the NCAA does not want free agency in its most popular and profitable sports.").

161 See generally Parrish, *supra* note 103.

162 *Id.* (alterations in original).

163 Michelle Brutlag Hosick, *DI Committee on Academics Considers Transfer Rule Changes*, NCAA (Apr. 5, 2018), <http://www.ncaa.org/about/resources/media-center/news/di-com->

reactions to the idea have been fierce. Those who view the potential academic benchmark for immediate eligibility as a good idea argue that the rule would incentivize student-athletes to maintain good grades in order to have the option to be immediately eligible should they want to transfer. For example, one student-athlete endorsed the idea “because it [would] keep[] you solid in school.”¹⁶⁴ Others disagree vehemently with a GPA requirement for immediate eligibility of transfers for two main reasons: first, because the difficulty of achieving a good GPA varies between schools;¹⁶⁵ and second, and perhaps more concerning, because of the potential for the rule to work in a way that disproportionately affects minority student-athletes.¹⁶⁶

Additionally, if a student-athlete transferred and was below the required GPA benchmark, everyone would know why that student-athlete was sitting out. One could certainly question whether such a rule is really fair to student-athletes or whether it adequately takes their well-being into account. This is simply one example of a potential solution to the one-time transfer exception problem. It illustrates just how difficult resolving the issue may be—indeed, that may be the reason that the TWG did not propose any rules related to the exception in its most recent iteration. The NCAA will need to seriously consider equity and fairness to its student-athletes when determining what to do, and it may have to come up with a creative solution in order to balance its own interests in amateurism with the interests of student-athletes.

CONCLUSION

The prevalence of transfers in NCAA Division I sports has trended upward at an increasing rate over the last several years and has shown no signs of slowing down. As transfer student-athletes, both graduate and undergraduate, have made headlines for their transfers, the Division I rules that govern those transfers have come under increased scrutiny, especially in light of the NCAA's stated mission and purposes. The year-in-residence rule, requiring student-athletes to sit out a full year after transferring; the graduate-transfer rule, permitting graduate student-athletes to transfer and compete immediately; and the one-time transfer exception, permitting student-athletes in sports other than basketball, football, baseball, and men's ice hockey to avoid the year-in-residence requirement for their first transfer, have particularly been put under the microscope. Two of the NCAA's guiding principles that are most relevant in the transfer context are a commitment to an amateur model of intercollegiate athletics and a commitment to

mittee-academics-considers-transfer-rule-changes (discussing the recommendation from the Division I Committee on Academics to adopt of an academic benchmark for immediate eligibility after transfer).

164 Dodd, *supra* note 12.

165 *Id.* (“[S]ome pointed out that a ‘B’ at Stanford isn’t the same as a ‘B’ at, say, Toledo.”).

166 *Id.* (“[Y]ou don’t have to be very hard into it to realize [an academic benchmark] cuts very hard across racial lines.” (second alteration in original)).

fairness and the well-being of student-athletes. In addition, an interest that draws less attention but is nonetheless significant is that of Division I institutions in having full autonomy over their academic programs.

As the NCAA seeks to shape its transfer system, it must account for each of those key values—and it took a major step forward in terms of fairness to student-athletes with the recently added notification-of-transfer procedure for initiation of the transfer process. In approaching questions about the efficacy of a transfer rule, the NCAA and its members should use the following normative framework to determine how well such a rule comports with the NCAA's purposes and values: (1) Is the rule designed and tailored in a way that it can be reasonably expected to prevent the creation of a free agency that might threaten the NCAA's model of amateurism; (2) is the rule fair to student-athletes, or does it impose a burden on student-athletes that is not commensurate with or exceeds the NCAA's concern and interest in maintaining that amateur model; and (3) is the rule likely to interfere with institutional autonomy by influencing institutions' academic decisions? The NCAA has four recently proposed transfer rules that will be voted on in the 2018–19 legislative cycle; these proposals provide good examples of the sort of solutions the NCAA is trying to come up with in order to move its transfer system forward. Applying the normative framework sheds light on the proposals' appropriateness given the NCAA's goals in the realm of transfer regulations. Because of the impact that these rules can have on Division I student-athletes, Division I institutions, and the fabric of intercollegiate athletics as a whole, it is important that the NCAA and member institutions approach these issues with care, especially as those organizations consider how to deal with the complexities surrounding the one-time transfer exception and the ability of student-athletes to transfer with or without restriction. Against that backdrop and using the suggested framework, we can be hopeful that the modern transfer rules will embody fairness for student-athletes' well-being while maintaining the integrity of intercollegiate athletics.