The Jury Is In on Intercollegiate Athletics

By Tim Walsh, Marisa Zuskar

The line between student and athlete continues to blur.

The NCAA has long maintained that intercollegiate athletes are students first and athletes second, and that players should therefore not receive compensation or other benefits beyond the costs of their education.

For the past year, colleges and universities have been monitoring policy and regulatory changes from the NCAA, individual states and even Congress that will fundamentally change American collegiate athletics. This time of uncertainty has been heightened by the June 2021 U.S. Supreme Court decision on NCAA v. Alston. In that landmark opinion, the Supreme Court unequivocally rejected the NCAA's appeal that its rules limiting benefits to student athletes were necessary to preserve the concept of amateurism.

The case began in March 2019, when students filed a lawsuit alleging that the NCAA's restrictions on "non-cash education-related benefits" violated the Sherman Antitrust Act. A California judge agreed and effectively mandated the NCAA to revise its grant-in-aid rules, allowing colleges and universities to offer athletic benefits of higher value. The recent Supreme Court decision siding with the lower court will permit institutions to provide funding to student athletes to pay for computers, musical instruments, or other services and goods related to the student's education, as well as cash awards for academic achievement. These additional benefits are not historically included in the NCAA's cost of attendance (COA) limits; the decision opens th e door for athletes to receive even greater benefits from schools, like funding for study abroad program participation, post-graduation internships, etc.

The Supreme Court's ruling raises questions related to finance, compliance, competition and strategy. Colleges and universities will be forced to create new policies to remain competitive and compliant. To confront the sea of change that awaits intercollegiate athletics, athletic departments and universities will need to collaborate as they chart a path forward.

A potential athletic budget crisis

NCAA v. Alston could have major implications for university budgets. A recent Huron article touched on the already precarious financial model of many athletic departments and the costs of maintaining them, particularly during the COVID-19 pandemic.

For a small and declining number of institutions, the athletic department is a genuine source of revenue diversification, but many colleges rely on student fees and institutional subsidies to balance athletics budgets. Under many resource allocation models, athletic departments are treated as auxiliary units within the university; as such, they are expected to break even financially and must rely on a variety of revenue sources to do so. Despite revenue growth in recent years, athletic departments have struggled to balance their annual budgets — much less accumulate financial reserves — due to steadily increasing expenses such as new facilities and updated equipment for student athletes, travel and recruiting, and coaching and administrator compensation.

In 2019, total revenue across all NCAA athletics departments totaled $18.9 billion — with 56% being revenue generated by the departments themselves. While most large athletic departments are major revenue-generating units, they also are expensive to operate. Most athletic departments spend more than they make, with the remaining balance subsidized by other sources like institutional support and student fees. With the *NCAA v. Alston* outcome requiring the NCAA to allow institutions to fund additional academic and education-related benefits, the "cost" of athlete recruitment and enrollment could go way up for some institutions.

Given existing Title IX requirements, financial officers are determining how to make up for the additional resources needed. When you consider the competitive athletic recruitment environment, institutions will in many cases need to increase financial incentives for recruitment and maximize education-related funding to recruit top talent, further adding to an already fragile budget.

These increasing financial demands may also require colleges to be strategic in institutional investments in athletics and how institutions can look to spend those resources most efficiently. To account for the potential budgetary needs resulting from the Alston ruling, institutions should take a critical eye to what they are spending on their athletic enterprise and what the related financial implications are on the broader institution.

It is also important to note that Alston comprised several smaller lawsuits on the same theme. Recognizing the single *Alston* case was not a stand-alone legal assessment underscores the risk of ongoing or increased future antitrust litigation and financial fallout if colleges and universities continue to limit students' allowable "earnings" opportunities. It will be up to institutions to carefully navigate and balance the impacts of the June 2021 ruling.

Collaborating across campus to benefit student athletes

Considering the financial and compliance implications, institutions need to be strategic in how they tackle operational and budgetary challenges and in how they continue to support student-athletes.

The *NCAA v. Alston* ruling will upend institutional practices — and not just those within the athletic department. Institutions should be thoughtful, and not overly reactive, in responding. A thoughtful approach will require cross-campus collaboration, involving coordination with athletics, student affairs and financial aid, as well as compliance and general counsel. With athletic departments partnering with the university-at-large to face these changes, they can begin to sort out how the future of intercollegiate athletics may impact their institutions.

Think about the potential impact of the Alston ruling on an institution's approach to Title IX compliance: Title IX requires higher education institutions to provide equitable opportunities and experiences to all student athletes, regardless of gender. Therefore, it leads that equivalency in financial aid to all genders would extend to the non-cash educational benefits allowable under Alston. For example, if educational benefits funded for male athletes increase, institutions will still need to balance that increased investment across genders. An increase in funding and newly allowable costs could lead to increased risk of inequity. Developing approaches to maintain Title IX compliance and manage this risk will be most effective if all stakeholders coordinate to achieve the solution.

Keep in mind, this is still a shifting landscape. The NCAA bylaws have not yet been updated in response to Alston, and conversations will continue over the summer on the scope of the Supreme Court's Alston decision. It may take some time for the financial impacts of allowable non-cash educational benefits to significantly impact institutional budgets as both students and institutions begin to understand the mutual give and take. Institutions do not need to rush to design a full system for requirements that are not yet in place and costs that have not been incurred. Take appropriate time to be thoughtful in the assessment and management of the financial and regulatory risks and of the design and deployment of operational changes.

"What remains important is continuing to support all student-athletes," says Jim Delany, former commissioner of the Big Ten Conference. "Despite the changes that will come from Alston, that will not change. This is a part of an ongoing evolution, and hopefully more and more people will continue to support our full-time students committed to playing college athletics holistically, not just them as players, but as students, and as people."

Key Takeaways

Proactive scenario planning can allow for budget planning, compliance and financial risk management, and the best protections and outcomes for student-athletes. To evolve with the changing face of intercollegiate athletics, leaders at colleges and universities should:

Think differently.

Align athletic and other university leadership teams on key questions — what is the role of athletics at your institution? Are decisions, priorities and incentives aligned with the athletics purpose (e.g., financial, competitive) and with the commitments to equitable access to student learning opportunities?

Plan differently.

Monitor NCAA and athletic conferences to understand, compare and contrast applicable rules and regulations. What policies and procedures may need to be developed or updated to align with regulatory changes? Which institutional stakeholders should be involved in the institutional response? What is the timing for action?

Act differently.

Align campus leadership on the financial priorities and expectations for budgetary changes. How might this affect your athletic department's bottom line? What investment is the institution prepared to make? What are the levers available to mitigate some of the cost implications?

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