

## **The New Academic Requirements for Amateur Sports: 'No Pass, No Play'**

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### **■ INTRODUCTION**

This court is not saying that athletes aren't capable of scholarship; however, they are given little incentive to be scholars and few persons care how the student athlete performs academically, including many of the athletes themselves. The exceptionally talented student athlete is raised to perceive the basketball, football, and other athletic programs as farm teams and proving grounds for professional sports leagues. It well may be true that a good academic program for the athlete is made virtually impossible by the demands of their sport at the college level. If this situation causes harm to the university, it is because they have fostered it and the institution rather than the individual should suffer the consequence.<sup>2</sup>

In Hall<sup>3</sup> Judge Lord, in the quote above, intimates that amateur sports really is not as pure as it used to be. The concept of amateurism began in the 1700's and was a leisure outlet for the upper case. These amateurs desired no income nor had aspirations for a greater level of notoriety at all from their athletic pursuits. In contrast, present day amateurs have visions of grandeur and greatness. The distinction between amateurs and professionals can become extremely hazy and confused as youth athletes hurdle through the steps to become college stars and possible professional athletes. The higher the athlete climbs the greater the confusion between amateurism and professionalism.

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

The key to the analysis of amateur sports is the status of the amateur athlete. However, the definitions and categorizations are somewhat confusing and contradictory. Since each governing body of sport can and does subscribe to a somewhat different definition of the term amateur. Due to this unique flexibility in America of defining amateur, there is a possibility that an individual can be viewed as an amateur under the rules of the USOC, but not be an amateur under the state high school association rules or the NCAA.

Courts, though, are generally very reluctant to overrule the rules of the athletic associations as regards to eligibility, participation, and discipline of their athletic participants. Generally, courts will not interfere with the internal affairs of voluntary associations. In the absence of mistake, fraud, collusion, or arbitrariness, the decisions of the governing body of the association will be accepted by the courts as conclusive. Voluntary associations may adopt reasonable by-laws and rules which will be deemed valid and binding upon their members unless these rules violate some law or public policy. The courts do not have the responsibility to inquire into the expediency, practicability, or wisdom of these regulations. Further, these general principles apply to cases that involve amateur athletics including the governing bodies of state high school athletic associations and college sports. Finally, the courts will not substitute their interpretations of the associations, rules and regulations for the interpretations placed on these rules by the association itself, so long as that interpretation is fair and reasonable.<sup>4</sup>

The key question involved in determining whether or not a student athlete is eligible to participate - who is eligible or not eligible to participate under a particular rule and by-law or the governing association. Eligibility rules cover the whole gamut of interpersonal relationships and characteristics. However this analysis will target only one aspect - scholarship.

Scholarship is used as a means restrict eligibility to participate. These regulations have the same common objectives, namely, the protection of the student-athlete, the promotion of education, and the continuation of amateurism. However, there are those that will claim these regulations restrict the student athlete's so-called right to participate. Unfortunately, there really is no right to participate; it is more of a privilege than anything else.<sup>5</sup>

This analysis of academic requirements in amateur athletics will including discussions relative to participation as a right or privilege, equal protection, due process, legislative enactments, proposition 48 and 42 and other new academic requirements, a review of interscholastic 'no pass, no play' rules, and notable court challenges.

## ■ RIGHT TO PARTICIPATE

One of the fundamental questions that must be analyzed relating to eligibility of a student athlete, whether it be interscholastic or intercollegiate, is whether that individual has the right or privilege to participate. If there is a right, then the relationship between the athlete and the controlling organization which administers the competition will be on a much different legal plane than if it were viewed as a privilege. The question generally before the bar is, whether a student athlete in a public institution has a sufficiently important interest in participation in his/her sport so as to require that he/she receive procedural safeguards as required by due process. The threshold question in any inquiry into a claim that an individual has been denied procedural due process is whether the interest asserted by the individual rises to the level of a 'property' or 'liberty' interest protected by the U.S. Constitution and all state constitutions.

When confronted with this precise issue, the overwhelming majority of courts

have held that participation in interscholastic or intercollegiate athletics or other extracurricular activities is not a constitutionally protected liberty or property interest.<sup>6</sup> In *Hall v. University of Minnesota*,<sup>7</sup> the court found that there was a limited property interest in participation in intercollegiate sports. Regardless, in the Tenth Circuit Court of Appeals case, the court found that the interests of student athletes, including those on scholarship, to participate in intercollegiate hockey did not rise to the level of a constitutionally protected right requiring due process, in connection with the NCAA's imposition of sanctions against the university for failure to declare several of its players ineligible.<sup>8</sup> However, in interscholastic sports, the courts rarely find that a right to participate exists. Thus, the opportunity to participate in extracurricular activities is not, by itself a property interest, although it appears that under certain circumstances, a high school student can properly establish an entitlement to due process protection in connection with his suspension and exclusion from high school athletics.<sup>9</sup> Finally, on the whole, participation in sports is not a fundamental interests, and therefore, eligibility to participate is not entitled to a strict standard of review by the court.

## ■ DUE PROCESS AND EQUAL PROTECTION

In reviewing the constitutionality of eligibility regulations two other basic rights need to be considered - due process and equal protection. Due process has been used to eliminate enactments which are over broad in application concerning a student athletes protected rights or those that had overlooked more feasible alternative which would be less restrictive of a student athletes protected liberties.<sup>10</sup> Due process will only apply when a state or federal action is involved, the aggrieved party is a 'person,' and an interest in life, liberty, or property is threatened.

In *Board of Curators of the University of Missouri v. Horowitz*, the court ruled that the dismissal of a student for academic reasons does not necessitate the same degree of procedural protection as would a dismissal for misconduct.<sup>11</sup> The *Horowitz* decision indicates that courts will defer to the judgements of educators in strictly academic matters.<sup>12</sup>

The Court observed: "Academic evaluations of a student, in contrast to disciplinary determinations, bear little resemblance to the judicial and administrative fact-finding requirement."<sup>13</sup> The substantially more subjective judgements called for in an academic dismissal require the evaluative skills of a professional educator and therefore are not easily adapted to the framework of a judicial or administrative hearing.<sup>14</sup> *Horowitz* suggests the misconduct dismissals would be entitled to a higher degree of procedural protection than the athletes rendered ineligible by a failure to maintain the minimum grade-point average necessary for continued eligibility.<sup>15</sup> However, *Horowitz* does not propose a threat to the due process rights of scholarship athletes. This partly because other cases decided similar to *Horowitz* have recognized two significant exceptions to the general rule, adopted in *Horowitz*, that courts will not interfere with academic dismissals.<sup>16</sup> The first exception applies when the student alleges that the institution's actions are "arbitrary, capricious, and in bad faith"<sup>17</sup> and the second is triggered when the dismissal involves "unusually serious consequences for the student."<sup>18</sup>

In *Hall*, the student athletes right to procedural protection was upheld. Mr. Hall was a college basketball player, who was denied admission, lost his athletic eligibility, and claimed the denials did not afford him due process and was in bad faith.<sup>19</sup> He was granted a preliminary injunction because, otherwise, his aspirations of a professional career would be substantially threatened. The court ruled in the plaintiff's favor because the probable harm to the student athlete outweighed any harm that granting the injunction would inflict upon the other party, and because the student demonstrated a substantial probability of success on his due process claim and the court recognized that a student's interest in attending a university is a property right protected by due process. Further, the court maintained that the factors to be balanced to determine what is due process are: (1) the private interests affected by the action, (2) the risk of erroneous deprivation of such interests through the procedure used, (3) the value of additional procedural safeguards, and (4) the governmental interest involved, including physical and administrative burdens.

The importance of the *Horowitz* and *Hall* cases is that due process in academic dismissals can be guaranteed by notifying the student athlete of deficiencies while time in which to correct those deficiencies remains, and by providing an informal meeting with faculty members such as the student can present reasons why the dismissal should not occur.<sup>20</sup> Further, the clearer and more timely the notice to the student of impending failure, the less formal any subsequent meeting concerning the consequences of that failure needs to be.<sup>21</sup> Finally, student athletes who fail to earn the grades or credits necessary for continued eligibility, despite awareness of their universities' published academic requirements and adequate notice of potential failure, do not require the protection of formal adjudicatory proceedings.<sup>22</sup>

On the other hand, equal protection requires only a rational relation to a legitimate state of interest if the regulation neither infringes upon fundamental rights nor burdens an inherently suspect class.<sup>23</sup> In *Bell*,<sup>24</sup> it was held that a regulation prohibiting married high school students from participating in interscholastic activities was a violation of the equal protection clause. The court found no logical basis for the so-called married student rule. The right to marry is a basic and fundamental right. The no-marriage rule established a classification of individuals to be treated differently from the remainder of the students without being designed to promote a compelling interest.

However, the Supreme Court, in *Spring Branch I.S.D. v. Stamos*,<sup>25</sup> held that (1) the 'No Pass, No Play' rule was rationally related to legitimate state interest in providing quality protection guarantees, and (2) student do not possess constitutionally protected interest in their participation in extracurricular activities and thus, rule was not violative of due process or equal protection rights. Further, the court suggested that the 'No Pass, No Play' rule distinguished students based on whether they maintain a satisfactory minimal level of performance in each of their classes. Students who failed to maintain a minimal proficiency in all their classes were ineligible for participation in school-sponsored extracurricular activities for the following six week period, with no carry over from one year to the next. The rule provided a strong incentive for students wishing to participate in extracurricular activities to maintain minimal level of performance in all their classes. Finally, the

court found the rule was rationally related to the legitimate state interest of providing quality education and that the rule's objective was to promote improved classroom performance.

## ■ LEGISLATIVE ENACTMENTS

In the early eighties 'No Pass, No Play' legislation began sweeping the country. This legislation keys the eligibility to participate in interscholastic sports to the student athlete's ability to achieve certain academic grades. This legislation paralleled the NCAA adoption of far reaching academic standards in 1984,<sup>26</sup> meant to strike a balance between access to education and academic integrity on college campuses.

This phenomenon, at the interscholastic level, appears to have started in 1984, when Texas wanted to know why its students failed standardized tests. It was concluded in Texas that extracurricular activities, especially football,<sup>27</sup> interfered with one's ability to concentrate on academia. Therefore, Texas enacted the 'No Pass, No Play' statute, which basically demands that no student can participate in any extracurricular activity for a six-week period if he or she fails<sup>28</sup> any course during the preceding six-week period, other than the last grading period before the summer break.<sup>29</sup> Other states enacted similar statutes,<sup>30</sup> and other states have left the decision up to the state high school athletic association, but all have one thing in common, namely, they tie high school athletic eligibility to the student's previous academic achievement.

After reading *Friday Night Lights*, it is not hard to understand Texas has a problem with football. As you might guess, the 'No Pass, No Play' statute created great havoc in the Lone Star State. Although Texas was the first to initiate a 'No Pass, No Play' program, other states such as West Virginia (i.e. leaves the responsibility of initiating the 'No Pass, No Play' procedures to each county board of education), and California (as a condition for the receipt of an inflation adjustment . . . establishing a school district policy regarding participation in extracurricular and co-curricular activities by pupils in grades 7 to 12, exclusive) also enacted versions of 'No Pass, No Play' statutes.<sup>31</sup> Since these statutes were passed the state high school athletic associations have provided greater definition for the school districts in each state.<sup>32</sup> The Texas statute applies to all extracurricular activities,<sup>33</sup> in West Virginia it applies only to 'non-academic' extracurricular activities such as interscholastic athletics and cheerleading,<sup>34</sup> and California the regulations apply to extracurricular activities which are defined as "not part of the regular school curriculum, . . . no graded, does not offer credit, and does not take place during classroom time;" any program that has "as its primary goal, the improvement of academic or educational achievements of pupils is not . . . extracurricular . . ."<sup>35</sup>

The intent of all the 'No Pass, No Play' mechanisms (i.e. statutes or state high school athletic association regulations) is pro-education. Emphasizing to each student that their preeminent responsibility is to meet the academic challenge of learning. These mechanisms are not to be construed as a 'means to exclude participation in extracurricular activities' but rather to 'foster academic excellence'.

Although the intent of each regulation, whether it is a state legislative or high school athletic association creation, is to provide a “strong incentive for students wishing to participate in extracurricular activities to maintain minimum levels of performance in all of their classes . . . [and] to promote improved classroom performance by students,”<sup>36</sup> the way that this objective is achieved is processed in different ways in the different states and provinces as can be seen in Table 1.

## STATUS OF ‘NO PASS, NO PLAY’ RULES IN NORTH AMERICA 1995

STATE	RULE
ALASKA	Does not require a specific minimum GPA; A student must have passed, for the immediately preceding semester, at least four (4) semester units of credit toward graduation.
ALABAMA	. . . student must have passed during the preceding year in attendance at least five new full Carnegie Units with a minimum composite numerical average of ‘70’ in those five units or subjects. . . . students who do not pass five new units, lose their eligibility the entire succeeding school year unless the required five units are completed before the next school year starts (i.e. summer school).
ARKANSAS	<i>Arkansas Activity Association (ASA):</i> A student must have four academic courses the previous semester and earned a GPA of 1.6 or better from all academic courses the previous semester. <i>Arkansas Department of Education:</i> . . . requires a minimum GPA of 2.0.
ARIZONA	. . . students must be enrolled in a minimum of five courses the first six semesters of high school and a minimum as determined by the district during the 7th and 8th semesters.
CALIFORNIA	<i>Initial eligibility:</i> . . . student must have achieved a 2.0 GPA in enrolled courses on a 4.0 scale at the conclusion of the previous grading period (8th grade) in order to be eligible. <i>Continuing eligibility:</i> A student is scholastically eligible if: <ul style="list-style-type: none"> <li>✓ The student is currently enrolled in at least 20 semester periods of work.</li> <li>✓ The student passed at least 20 semester periods of work at the completion of the previous grading period.</li> <li>✓ The student is maintaining minimum progress toward meeting the high school graduation requirements as prescribed by the governing board.</li> <li>✓ The student has maintained during the previous grading period a minimum 2.0 GPA, on a 4.0 scale, in all enrolled courses.</li> </ul>

STATE	RULE
COLORADO	<p>At the close of his/her last prior semester of attendance . . .</p> <p>Plan A: During the period of participation, the student must be enrolled in courses which offer, in aggregate, a minimum of 2.5 Carnegie Units of credit per semester and must not be failing more than the equivalent of one-half Carnegie Units of Credit.</p> <p>Plan B: During the period of participation, the student must be enrolled in courses which offer, in aggregate, a minimum of 2.5 Carnegie Units of credit per semester and must pass a minimum of the equivalent of 2.5 Carnegie Units of credit.</p>
CONNECTICUT	<p>To be eligible for fall sports a pupil must have received credit toward graduation at the close of the school year preceding the contest in at least four (4) Carnegie Units of work of its equivalent for which he or she has not previously received credit.</p>
DELAWARE	<p>A. In order to be eligible for participation in interscholastic athletics, including practice, a student must pursue a regular course of study or its equivalent as approved by the Department of Public Instruction, and must be passing at least four credits. Two of these credits must be in the separate areas of English, Mathematics, Science, or Social Studies.</p> <p>B. In the case of a student in the twelfth grade, he/she must be passing all courses necessary for graduation from high school in order to be eligible for participation.</p> <p>C. A student whose work in any regular marking period does not meet the above standards shall be ineligible to participate in interscholastic athletics, including practices, for the next marking period.</p> <p>D. Local school boards may establish requirements over and above the minimums herein prescribed for eligibility.</p>
FLORIDA	<p>A student to be eligible during any grading period must have a passing grade in each of five unit subjects for the grading period just closed. Florida School Laws 232.425 requires that a student must comply with the minimum grade point average required by state statute during the immediate preceding school year. The requirements for the fifth subject may be met by attendance in a regularly organized summer school under the direction of or approved by the District School Board.</p>
GEORGIA	<p>A student is required to pass five Carnegie Units counting toward graduation, or their equivalent, the semester or quarter immediately preceding participation in order to be eligible. In order to practice or try out a student must be eligible to participate. Finally students must be making satisfactory progress and be 'on track' for graduation in order to participate.</p>

STATE	RULE
HAWAII	A student shall maintain eligibility for HHSAA competition provided that he/she meets the academic eligibility requirements of his/her league.
IDAHO	For a student to be academically eligible, he/she must be enrolled full-time and have received passing grades and earn credits in at least five full-credit subjects, or the equivalency, the previous semester or grading period for which credit is granted.
ILLINOIS	A student must have received passing grades at the end of the last grading period in school in at least five full credit subjects or the equivalent and must be enrolled in at least five full credit subjects or the equivalent in order to be eligible. Semester grades take precedence.
INDIANA	A student must have received passing grades at the end of their last grading period in school in at least five full credit subjects or the equivalent and must be enrolled in at least five full credit subjects or the equivalent in order to be eligible. Semester grades take precedence.
IOWA	All contestants shall be enrolled students of the school in good standing; they shall have earned 20 semester hours' credit toward graduation in the preceding semester and shall be making passing grades in subjects for which 20 semester hours' credit is given for the current semester as determined by local policy.
KANSAS	The student shall have passed at least five new subjects (those not previously passed) of unit weight, or its equivalency, the previous semester or the last semester of attendance.
KENTUCKY	A contestant must have, for the current academic school year up to and including Friday of the week preceding the week in which the contest occurs, a passing average in each of at least four full-credit high school <u>subject hours</u> or their equivalent in units of credit accepted for graduation.
LOUISIANA	For students to be academically eligible they must maintain a 1.5 GPA in five full-credit units.
MAINE	A student who has completed and passed work in the equivalent of four full-time subjects with credit toward graduation in the most recently completed quarter.
MARYLAND	Each local school system shall establish standards of participation which assure that students involved in interscholastic athletics are making satisfactory progress toward graduation.



STATE	RULE
MASS.	A student must secure during the last marking period preceding the contest a passing grade in the equivalent of four major subjects.
MICHIGAN	A student's eligibility depends on a passing grade from the beginning of the semester to the date of the eligibility check. If an athlete is not passing at least 20 credit hours when checked, that athlete becomes ineligible for competition for the next Monday through Sunday. Eligibility is reinstated after the seven day period and a grade check indicates the student is passing 20 credit hours. Reinstatement occurs the following Monday.
MINNESOTA	Students are not required to be passing in their course work during a current marking period. However, they forfeit their eligibility for the next marking period in which they attend if they are not making satisfactory progress towards the school's requirements for graduation at the end of the marking period.
MISSOURI	A student in Grades 9-12 must be currently enrolled in and regularly attending courses that offer a minimum of 2.50 units of credit, must have earned a minimum of 2.50 units of credit that preceding semester of attendance, and must have made standard progress for his or her level the preceding semester.
MISSISSIPPI	For a student to be academically eligible, he/she shall at the end of each semester be able to demonstrate normal progress toward the earning of 18 Carnegie Units of credit required for graduation. The student must have at least an average of 70 in each course that amounts to 4 1/2 credits toward graduation each year. Beginning with the Freshman class of 1992-93 school year, a student must earn five credits toward graduation each year which will be 20 Carnegie Units required for graduation. A student who fails to meet the requirements at the end of the first semester would be placed on WARNING for the following semester. If by the end of the WARNING semester, requirements have been met, the student would be ineligible. A student who is not eligible at the beginning of the school year, may become eligible the second semester, by passing the first semester with a 70 average, subjects that when successfully completed would produce 5 credits toward graduation for the year.
MONTANA	To be eligible to participate in an Association Contest, a student must have received a passing grade in at least twenty periods of prepared work per week or its equivalent during the last preceding semester in which he/she was in attendance.
NEBRASKA	To be eligible, the student must be taking at least twenty semester hours of instruction per week at the school the student represents in interscholastic instruction.

STATE	RULE
NEW JERSEY	To be eligible for athletic competition during the first semester of the 10th grade or higher, or the second year of attendance in the secondary school or beyond, a pupil must have passed 25% or the credits (27.5) required by the State of New Jersey for graduation (110), during the immediately preceding academic year. The NJSIAA does not establish grading policies or standards for granting credits, the local school's Board or Education has the exclusive authority to address such matters within the parameters of the State Board of Education guidelines.
NEW HAMPSHIRE	No pupil who has failed to pass <i>four (4) units of work</i> during the <i>previous ranking period</i> shall represent the school in any interscholastic contest. A minimum of four (4) units of work per marking period is required for participation in interscholastic athletics.
NEW MEXICO	A student shall have passed a minimum of four (4) classes, not failed more than one (1), and had a GPA of 2.0 or better for the most immediate previous grading period or cumulatively, beginning with and including the second semester of grade eight (8).
NEW YORK	A pupil shall be eligible for interschool competition in a sport during a semester, providing that he is a bonafide student, enrolled during the first 15 days of the semester, is registered in the equivalent of three regular courses, is meeting the physical education requirement and has been in regular attendance 80% of the school time, bona fide absence caused by personal illness excepted.
NORTH CAROLINA	A student must have passed a minimum load of work during the preceding semester to be eligible at any time during the present semester. However, if he/she passes a minimum load for the year, his record during the spring semester shall be immaterial to his status during the following fall semester. Students must also meet local promotion standards set by the LEA.
NORTH DAKOTA	A student shall be doing passing work in at least twenty hours per week, the passing grade to be computed from the opening of the semester and to relate to such subjects only as severally and individually shall have a credit value of one-half unit per semester.
NEVADA	A pupil must pass four classes during the last semester of his/her eighth grade year, must be enrolled in two credits and be in regular attendance at a member school, must pass a minimum of two units of the previous semester, must maintain a passing academic grade and satisfactory citizenship in all courses during the sport season, and progress must be check a minimum of once every 3 weeks.

STATE	RULE
OHIO	In order to be eligible in grades 9-12, a student must be currently enrolled and must have been enrolled in the school the immediately preceding grading period. During the preceding grading period, the student must have received passing grades in a minimum of four one-credit courses of the equivalent which count toward graduation.
OKLAHOMA	A student must have received a passing grade in any five subjects counted for graduation that he/she was enrolled in during the last semester he/she attended fifteen or more days. Scholastic eligibility for students will be checked after three weeks of a semester and each succeeding week thereafter. School may choose to run eligibility checks on any day of the week.
OREGON	An eligible student is one who is enrolled in school, attending regularly and passing in subjects equivalent to at least five (5) credits of work, and who during the preceding semester was enrolled in school, attended regularly and passed subjects equivalent to at least five (5) credits of work.
PENNSYLVANIA	To be eligible for interscholastic athletic competition, a pupil must pursue a curriculum defined and approved by the principal as a full-time curriculum. Where required, this curriculum or its equivalent must be approved by, and conform to, the regulations of the State Board of Education and the Pennsylvania School Code, as well as any local policies established by the local school board. The pupil must be passing at least four full-credit subjects, or the equivalent. Eligibility shall be cumulative from the beginning of the grading period, shall be reported on a weekly basis, and shall be filed in the principal's office.
RHODE ISLAND	The athlete must be taking at least four subjects, not including physical education, each involving at least four period of work or an aggregate of fifteen periods of work per week.
SOUTH CAROLINA	To participate in interscholastic activities, students in grades 9-12 must achieve an overall passing average and either: (1) pass at least four academic courses, including each unit the student takes that is required for graduation; or (2) pass a total of five academic courses.
SOUTH DAKOTA	<p>(1) <i>Preceding Semester.</i> The student, unless they are entering high school for the first time, shall have successfully passed twenty hours of high school work per week, for which academic units or credits earned are used in the issuance of a diploma, for the preceding or the most recent semester of attendance in any accredited high school.</p> <p>(2) <i>Current Semester.</i> The student shall be enrolled in an accredited high school and attend a minimum of twenty hours of high school work per week during the current semester for which academic units of credits earned are used in the issuance of a diploma.</p>

STATE	RULE
TENNESSEE	Students must enroll in a minimum of five classes. Students must pass all five classes in order to participate.
TEXAS	<p><i>What standards determine academic eligibility for the first six weeks of the school year?</i> Grades 9 and below: Students must have been <b>promoted</b> from the previous grade; Grade 10: five accumulated credits; Grade 11: ten accumulated credits or five credits during the previous 12 months; and Grade 12: fifteen accumulated credits or five credits during the previous 12 months.</p> <p><i>What standards determine academic eligibility each six weeks after the first six week of the school year?</i> A student is eligible if he/she passes all courses the previous six weeks.</p>
UTAH	To be eligible to compete in interscholastic competition, an individual must be a full-time student in the student in the school he/she wishes to represent. No student shall be eligible to represent his or her school if he or she is academically failing more than one subject.
VERMONT	Does not have a policy regarding academic performance standards for the student athlete.
VIRGINIA	(a) For the first semester be currently enrolled in not fewer than five subjects, or their equivalent, offered for credit and which may be used for graduation and have passed five subjects, or their equivalent, offered for credit and which may be used for graduation the immediately preceding year or the immediately preceding semester for schools that certify credit on a semester basis; and (b) For the second semester be currently enrolled in not fewer than five subjects, or their equivalent, offered for credit and which may be used for graduation the immediately preceding semester.
WASHINGTON	In order to maintain athletic eligibility during the current semester/trimester, the student shall maintain passing grades in a minimum of four (4) full-time subjects. Schools shall establish a grade monitoring system to ascertain the student's passing status in four (4) full-time grades. A student shall have passed at least four (4) full-time subjects (at least two (2.0) credits) in the immediately preceding semester/trimester in order to be eligible for competition for the succeeding semester/trimester.
WEST VIRGINIA	In order to participate in extracurricular activities to which this policy applies, a student must maintain a 2.0 average.
WISCONSIN	A student is eligible if he/she does passing work in a minimum of 20 hours in the latest grade-reporting or academic-evaluation period.

STATE	RULE
WYOMING	In order to be eligible for any level of interscholastic competition, a student must be currently enrolled and must have been enrolled in school the immediate preceding semester and received passing grades during that semester in subjects that earn a minimum of 4.0 credits or the equivalent per year toward graduation. Further a student must be enrolled in not less than 20 class hours of work per week.
BERMUDA	No rules regarding to academic eligibility.
ALBERTA	The competitor must register in a minimum of 800 instructional minutes per week during the time of participation in that activity for which Alberta Education Credits are granted.
BRITISH COLUMBIA	Does not have a policy regarding academic performance standards for the student athlete.
MANITOBA	Does not have a policy regarding academic performance standards for the student athlete.
PRINCE EDWARD ISLAND	The student must be enrolled in a register prescribed curriculum for the school and must have been in regular attendance during the school term in which the student wishes to compete. The student must be enrolled in course equivalent to more than 70% of a full course load per year in nonsemestered schools or three full credits per semester in semestered schools.
SASKATCHEWAN	Does not have a policy regarding academic performance standards for the student athlete.

## ■ COURT CHALLENGES

There have been a number of court challenges<sup>37</sup> to the 'No Pass, No Play' statutes and regulations. These challenges have focused on (1) constitutional grounds relating to equal protection and due process, and (2) fundamental rights arguments.

Equal protection requires only a rational relation to a legitimate state interest if the regulation neither infringes upon fundamental rights nor burdens an inherently suspect class. The right to play interscholastic or intercollegiate sports has rarely been viewed as a fundamental right.<sup>38</sup> Only when other factors are present (e.g. a college senior who will lose his ability to earn a living as a professional athlete if he is denied further intercollegiate eligibility) is there realistic possibility that the privilege to play will be elevated to a property right. Playing sports, then, is a privilege opposed to a fundamental right.<sup>39</sup>

An equal protection analysis is the first and most obvious question that arise relating to the constitutionality and legality of the 'No Pass, No Play' statutes and

regulations.<sup>40</sup> In the *Sullivan* case,<sup>41</sup> the plaintiff claimed that the state illegally discriminated against those who participate in extracurricular activities opposed to those who do not, that is, those who hang around the malls. Further, that equal protection is directed to the State and admonishes that "no state shall . . . deny to any person within its jurisdiction the equal protection of the law." However, equal protection does recognize that a State cannot function without some classification of its citizens for various purposes along with the corresponding different treatment of others. Generally, when the State's regulatory classification scheme neither infringes fundamental rights nor burdens an inherently suspect class then the equal protection analysis requires only that the classification be rationally related to a legitimate State interest.<sup>42</sup>

In most sport eligibility cases it is well established that participation in extracurricular activities is not a fundamental right.<sup>43</sup> In *Spring Branch* the court stated:

Fundamental rights have their genesis in the express and implied protections of personal liberty recognized in federal and state constitutions. A student's right to participate in extracurricular activities does not rise to the same level as the right to free speech or free exercise of religion, both of which have long been recognized as fundamental rights under our state and federal constitutions.<sup>44</sup> More specifically, because the "no pass, no play rule neither infringes upon fundamental rights nor burdens an inherently suspect class," therefore, "it is not subject to 'strict' or heightened equal protection scrutiny."<sup>45</sup>

The court in *Bailey*<sup>46</sup> held that participation in "nonacademic extracurricular activities, including interscholastic athletics," did not rise to the level of a fundamental right under either the federal or state constitutions. Therefore, a student who wishes to challenge a determination of ineligibility based upon a failure to meet "No Pass, No Play" requirements may do so only by challenging either the grades upon which the average was calculated or the calculation itself. The court further held that the rule was a legitimate exercise of the State Board of Education's "general supervision" power over the education system and in furtherance of the fundamental educational goal of academic excellence. The rule did not violate the student's rights to procedural due process, substantive due process or equal protection.

In *Kite v. Marshall*,<sup>47</sup> Judge Anthony emphasized the rights of parents to make developmental decisions for their families. The 'anti-family' argument is something on the order of . . . it is the family's desire to have their children enhance their education by participation in extracurricular activities. This defense strategy would be the most effective way to attack No Pass if the court would buy the connection between No Pass and the parent's freedom of choice in family matters. However, since there is no fundamental right in question the court most likely would not accept the argument.

The key to establishing a no pass, no play statute or regulation as unconstitutional is to ascertain whether the statute or regulation was reasonable and rationally related to its intended goal, which must also be a legitimate State purpose. In *Associated Students*,<sup>48</sup> a student challenged the NCAA's rule that limited eligibility for participation in intercollegiate athletics to students who have earned a grade

point average of at least 1.6, the court held that the rule was reasonably related to the purposes for which the rule was enacted and did not create an unconstitutional classification. Further in *Bartmess*,<sup>49</sup> the Montana Supreme Court was forced to deal with a rule of a school district that required a student to maintain a 2.0 (or 'C') grade average for the preceding nine week period as a prerequisite to participate in any extracurricular activities in the following nine week period. The interesting aspect of the school district's rule was that it was more stringent than was required by the Montana High School Association, which demanded only a 1.0 (or 'D') grade average for participation in extracurricular activities. The court held that the school district's no pass rule had a rational rule operated as an incentive for those students who wished to participate in extracurricular activities and also promoted adequate time to study for those who had not maintained a 2.0 grade point average.

## ■ SUMMARY

Amateur athletics are ordinarily conducted as part of the educational activities of high schools and colleges. It is also common for there to be rules which limit eligibility to those who maintain a required grade average. Such a statute or regulation will ordinarily be a proper exercise of state or institution authority. It will be authorized because the fostering of scholastic, not athletic, achievement is the primary objective of the academic institution, and denying participation in extracurricular activities to those who are unable to render satisfactory academic performance is directly related to that objective. A statute or regulation will also be reasonable so long as its impact is felt only by those unable to maintain satisfactory academic standing. The 'No Pass, No Play' statutes or regulations are commonly used as a means of insuring that only academically qualified athletes are eligible for interscholastic or intercollegiate competition.

## ■ CONCLUSIONS AND RECOMMENDATIONS

The No Pass controversy continues in Texas. In 1991 there was an attempt to reduce the period of gestation from six to three weeks, but it failed.<sup>50</sup> In 1993, two years later, another attempt to trim No Pass to three weeks was launched, but that too failed.<sup>51</sup> Further, in 1990 a Kentucky court of Appeals found that Kentucky's version of no pass, no play to pass constitutional muster.<sup>52</sup> Basically the court found that wrestling was not a property right, therefore, the school board's policy of limiting eligibility based on a 2.0 GPA minimum was a reasonable and legitimate interest violate the state constitution. "This case is not about a school system embarrassing a young man or punishing him for misconduct, but is solely about education and ensuring that the educational property right is not squandered or misused."<sup>53</sup> Finally, it appears that scholastic abilities will be the key to interscholastic athletic eligibility in the foreseeable future in Texas and Kentucky, and 47 other states (exception Vermont).<sup>54</sup> This concern for scholastic ability is also fostered by the NCAA as evidenced by the recent passage of new academic standards in January 1995.<sup>55</sup>

Recommendations relating to the new academic requirements for amateur sports include, but are not limited to:

- ✓ regulations should have three objectives, namely, the protection of the student-athlete, the promotion of education, and the continuation of amateurism;
- ✓ regulations must not be arbitrary, capricious or drafted in bad faith;
- ✓ regulations should guarantee due process in academic dismissals by notifying the student athlete of deficiencies while time in which to correct those deficiencies remains, and by providing an informal meeting with faculty members such as the student can present reasons why the dismissal should not occur. Further, the clearer and more timely the notice to the student of impending failure, the less formal any subsequent meeting concerning the consequences of that failure needs to be. Finally, student athletes who fail to earn the grades or credits necessary for continued eligibility, despite awareness of the high school's, and college's or universities' published academic requirements and adequate notice of potential failure, do not require the protection of formal adjudicatory proceedings;
- ✓ regulations should provide a strong incentive of students wishing to participate in extracurricular activities to maintain minimal level of performance in all their classes;
- ✓ regulations must be rationally related to the legitimate state interest of providing quality education; and
- ✓ regulations objective must be to promote improved classroom performance.

### **References**

<sup>2</sup> *Hall v. University of Minnesota*, 530 F. Supp. 104, 109 (D.Minn.1982).

<sup>3</sup> *Id.*

<sup>4</sup> *Kentucky High School Athletic Association v. Hopkins County Board of Education*, 552 S.W. 2d 685, 687 (Ky.Ap.1977). Also See generally W. Champion, Jr., *Fundamentals of sport laws* 293-295 (1990).

<sup>5</sup> See *Supra* note 1 at 110.

<sup>6</sup> See *Niles v. University Interscholastic League*, 715 F.2d 1027, 1031 (5th Cir.1983); *Hebert v. Ventetuolo*, 638 F.2d 5, 6 (1st Cir.1981); *Walsh v. Louisiana High School Athletic Association*, 616 F.2d 152, 159 (5th Cir.1980); *Dennis J. O'Connell High School v. Virginia High School League*, 581 F.2d 81, 84 (4th Cir.1979); *Moreland v. Western Pennsylvania Interscholastic Athletic League*, 572 F.2d 121, 123-24 (3rd Cir.1978); *Colorado Seminary (University of Denver) v. NCCA*, 570 F.2d 320, 321 (10th Cir.1978); *Hamilton v. Tennessee Secondary School Athletic Association*, 552 F.2d 681, 682 (6th Cir.1976); *Albach v. Olde*, 531 F.2d 983, 984-85 (10th Cir.1976); *Parish v. NCAA*, 506 F.2d 1028, 1034 (5th Cir.1975); *Mitchell v. Louisiana High School Athletic Association*, 430 F.2d 1155,



1158 (5th Cir.1970); *Oklahoma High School Athletic Association v. Bray*, 321 F.2d 269, 273 (10th Cir.1963); *Justice v. NCAA*, 577 F.Supp. 356, 366 (D.Ariz.1983); *Park Hills Music Club, Inc. v. Board of Education*, 512 F.Supp. 1040, 1043 (S.D.Ohio 1981); *Blue v. University Interscholastic League*, 503 F.Supp. 1030, 1034-35 (N.D.Tex. 1980); *Williams v. Hamilton*, 497 f.Supp. 641, 645 (D.N.H.1980); *Ward v. Robinson*, 496 F.Supp. 1, 1-2 (E.D.Tenn.1978); *Kite v. Marshall*, 494 F.Supp. 227, 232 (S.D.Tex.1980), rev'd on the grounds, 661 F.2d 1027 (5th Cir.1981); *Fluitt v. University of Nebraska*, 489 F.Supp. 1194, 1202-03 (D.Neb.1980); *Kulovitz v. Illinois High School Association*, 462 F.Supp. 875, 877-78 (N.D.Ill.1978); *Yellow Springs Exempted Village School District v. Ohio High School Athletic Association*, 443 F.Supp. 753, 758 n.37 (S.D.Ohio 1978), rev'd on other grounds, 647 F.2d 651 (6th Cir.1981); *Dallam v. Cumberland Valley School District*, 391 F.Supp. 358, 361-62 (M.D.Pa.1975); *Stock v. Texas Catholic Interscholastic League*, 364 F.Supp. 362, 364-365 (N.D.Tex.1973); *Taylor v. Alabama High School Athletic Association*, 336 F.Supp. 54, 57 (M.D.Ala.1972); *Paschal v. Perdue*, 320 F.Supp. 1274, 1276 (S.D.Fla.1970); *Scott v. Kilpatrick*, 286 Ala. 129, 133, 237, So.2d 652, 656 (1970); *Florida High School Activities Association v. Bradshaw*, 369 So.2d 398, 403 (Fla.App.1979); *Smith v. Crim*, 240 Ga. 390, 393, 393, 240 S.E.2d 884, 886 (1977); *Haas v. South Bend Community School Corporation*, 259 Ind. 114, 124, 162 N.E.2d 250, 255 (1959), overruled on other grounds, *Haas v. South Bend Community School Corporation*, supra; *Kriss v. Brown*, 180 Ind.App. 594, 604, 390 N.E.2d 193, 199-201 (1979); *Kentucky High School Athletic Association v. Hopkins County Board of Education*, 552 S.W.2d 685, 689 (Ky.App.1977); *Chabert v. Louisiana High School Athletic Association*, 312 So.2d 343, 345 (La.App.1975); *Sanders v. Louisiana High School Athletic Association*, 242 So.2d 19, 28 (La.App.1970); *Marino v. Waters*, 220 So.2d 802, 806 (La.App.1969); *NCAA v. Gillard*, 352 So.2d 1072, 1081 (Miss.1977); State ex rel. *Missouri State High School Activities Association v. Schoenlaub*, 507 S.W.2d 543, 359 (Mo.1974); *Menke v. Ohio High School Athletic Association*, 2 Ohio App.3d 244, 245, 441 N.E.2d 620, 624 (1981); *Morrison v. Roberts*, 183 Okl. 359, 361, 82 P.2d 1023, 1024-25 (1938); *Whipple v. Oregon School Activities Association*, 52 Or.App. 419, 423, 629 P.2d 384, 386 (1981); *Caso v. New York State Public High School Athletic Association*, 78 A.D.2d 41, 46, 434 N.Y.S.2d 70, 64 (1980); *Pennsylvania Interscholastic Athletic Association v. Greater Johnstown School District*, 76 Pa.Comm.w. 65, 71, 463 A.2d 1198, 1201 (1983); *Adamek v. Pennsylvania Interscholastic Athletic Association Inc.*, 57 Pa.Comm.w. 261, 262, 426 A.2d 1206, 1207 (1981); *Bruce v. South Carolina High School League*, 258 S.C. 546, 551-52, 189 S.E.2d 817, 819 (1972); *Tennessee Secondary School Athletic Association v. Cox*, 221 Tenn. 164, 176, 425 S.W.2d 597, 602 (1968); *Sullivan v. University Interscholastic League*, 599 S.W.2d 860, 863 (Tex.Civ.App.1980). Aff'd

in part and rev'd in part on other grounds, 616 S.W.2d 170 (Tex.1981); *Starkey v. Board of Education*, 14 Utah 2d 227, 231, 381 P.2d 718, 721 (1963); but see *Breden v. Independent School District 742*, 477 F.2d 1292, 1299 (8th Cir. 1973) ("substantial and cognizable" interest justifying application of equal protection principles); *Hall v. University of Minnesota*, 530 F. Supp. 104, 110 (D.Minn.1982) (interest in admission to degree program and potential professional basketball player career sufficient to implicate due process protection); *Barnhorst v. Missouri State High School Activities Association*, 504 F.Supp. 449-458 (W.D.Mo.1980) (sufficient interest in participation in extracurricular activities to justify application of equal protection principles) and cases cited therein, rev'd on other grounds, 682 F.2d 147 (8th Cir.1982); *Pegram v. Nelson*, 469 f. Supp. 1134, 1140 (M.D.N.C.1979) (Total exclusion from extracurricular activities for a lengthy period of time 'could' under certain circumstances be a sufficient deprivation to implicate due process); *Moran v. School District #7*, Yellowstone County, 350 F.Supp. 1180, 1184 (D.Mont. 1972) ("right to attend school includes the right to participate in extracurricular activities" justifying application of equal protection principles); *Behagen v. Intercollegiate Conference of Faculty Representatives*, 346 F.Supp. 602, 604 (D.Minn.1972) (economic and educational interest in intercollegiate athletics requires compliance with minimum due process standards); *Kelly v. Metropolitan County Board of Education*, 293 F. Supp. 485, 492 (M.D.Tenn.1980) (equal protection), rev'd on other grounds, 436 F.2d 856 (6th Cir.1970), on remand, 492 f.Supp. 167 (M.D.Tenn.1980); *Lee v. Florida High School Activities Association*, 291 So.2d 636, 638 (Fla.App.1974) (Denial of opportunity to establish athletic eligibility constituted a denial of due process); *French v. Cornwell*, 202 Neb. 569, 571, 276 N.W.2d 216, 218 (1979), citing *Braesch v. DePasquale*, 200 Neb. 726, 732, 265 N.W.2d 842, 845 (1978) (assuming the implication of a liberty or property interest for purpose of determining whether process given was sufficient); *Duffley v. New Hampshire Interscholastic Athletic Association, Inc.*, 446 A.2d 462, 467 (N.H.1982) (right to participate in interscholastic athletics entitled to procedural due process under New Hampshire Constitution); see also Comment, *Judicial Review of NCAA Decisions: Doe the College Athlete Have a Property Interest in Interscholastic Athletics?*, 10 Stetson L.Rev. 483, 499-505 (1981); note, *The NCAA, Amateurism, and the Student-Athlete's Constitutional Rights UPon Ineligibility*, 15 New Eng.L.Reb. 597, 614-622 (1980); *Bailey v. Truby*, 321 S.E.2d 302, 315-316 (W.Va.1984) (... because participation in interscholastic athletics or other nonacademic extracurricular activities does not rise to the level of a constitutionally protected 'property' or 'liberty' interest, the appellant does not meet the threshold requirement and therefore is not entitled to any procedural due process protections).

<sup>7</sup> See Supra note 1 at 107.

- <sup>8</sup> *Colorado Seminary (University of Denver) v. NCCA*, 570 F.2d 320, (10th Cir.1978).
- <sup>9</sup> See *Spring Branch I.S.D. v. Stamos*, 695 S.W.2d 556, 560, reh over, app dism'd, 475 US 1001, 89 L.E.2d 290, 106 S.Ct. 1170, *Boyd v. Board of Directors of McGhee School District*, 612 F.Supp. 86, 89 (E.D.Ark.1985); *Tiffany v. Arizona Interscholastic Association*, 151 Ariz. 134, 138, 726 P.2d 231, 235, (App.1986).
- <sup>10</sup> *Champion*, Supra note 3 at 307; See also J. Weistart and C. Lowell, *The Law of Sports* § 1.15 (1979).
- <sup>11</sup> 435 U.S. 78 (1978).
- <sup>12</sup> Note, *Board of Curators of the University of Missouri v. Horowitz; Student Due Process and Judicial Deference to Academic Dismissals*, 15 Willamette L.Rev. 577 (1979).
- <sup>13</sup> *Id.* at 89.
- <sup>14</sup> *Id.* at 90.
- <sup>15</sup> B.L. Porto, *Balancing Due Process and Academic Integrity in Intercollegiate Athletics: The Scholarship Athlete's Limited Property Interest in Eligibility*, 62 Indiana Law Journal 1151, 1176 (1990).
- <sup>16</sup> See Supra note 11 at 584.
- <sup>17</sup> See *Gaspar v. Bruton*, 513 F.2d 843 (10th Cir.1975); *Connelly v. University of Vermont & State Agriculture College*, 244 F.Supp. 156 (D.Vt. 1965).
- <sup>18</sup> See *Greenhill v. Bailey*, 519 F.2d 5 (8th Cir.1975).
- <sup>19</sup> See Supra not 1 at 106.
- <sup>20</sup> See Marx, *Horowitz: A Defense Point of View*, 13 J. Law & Educ. 51, 57 (1984).
- <sup>21</sup> See Friendly, *Some Kind of Hearing*, 123 U.Pa. L. Rev. 1267, 1296-97 (1975).
- <sup>22</sup> See Supra note 14 at 1178.
- <sup>23</sup> *Champion*, Supra note 3 at 307.
- <sup>24</sup> *Bell v. Lone Oaks Independent School District*, 507 S.W.2d 636 (Tex.Civ.App.1974), set aside and caused dismd on other grounds, 515 S.W.2d 252.
- <sup>25</sup> *Spring Branch*, Supra note 8.
- <sup>26</sup> NCAA Bylaw 14-3 (Proposition 48) defines a qualifier as a high school graduate having obtained a cumulative minimum grade point average of a 2.00,

(based on a maximum of a 4.00) in successful completed core curriculum of at least 11 academic courses (including at least three years in English, two years in Mathematics, two years in social sciences and two years in natural or physical science (including at least one laboratory course, if offered by the high school) at the time of graduation from high school as certified on the high school transcript or by official test correspondence, as well as a 700 combined score on the SAT verbal and math sections or an 17 composite score on the new ACT. The minimum required SAT or ACT score must be achieved no later than July 1 immediately preceding the individual's first enrollment in a collegiate institution.

Athletes who attain an overall high-school grade-point average of 2.0 but fall short of minimum scores on the SAT or the ACT may not compete, practice, or receive athletic scholarships. But they may get institutional financial aid that is not based on athletic merit. These athletes retain three years of athletic eligibility.

Athletes with high-school grade-point averages below 2.0 may not receive any financial assistance from their colleges. The athletes retain three years of athletic eligibility.

Proposition 48 became effective in August 1986.

In January 1995 the NCAA adopted new academic requirements that will be phased-in over the next two years. In 1995-96 in order for an athlete to compete and receive athletic aid as freshman, athletes must score 2.00 in 13 high-school core courses and at least 700 on the SAT or 17 on the ACT.

In 1996-97 in order for an athlete to compete and receive athletic aid as freshman, incoming athletes must have a 2.50 grade-point average in 13 high-school core courses and an SAT score of 700 or ACT of 17. Under a new sliding-scale index, athletes can become eligible with a core grade-point average as low as 2.00 if they offset it with a score of 900 on the SAT or 21 on the ACT.

Athletes who fall short of the new requirements but meet other minimum standards can practice and receive athletic aid as freshman. These athletes, called partial qualifiers, can meet a sliding scale that allows for an SAT score as low as 600 or 15 on the ACT if it is offset by a corresponding core grade-point average of at least 2.75. These athletes retain three years of eligibility.

Athletes who fall below the standards for partial qualifiers may receive non-athletic aid from their institutions. They retain three years of eligibility.

<sup>27</sup> See H.G. Bissinger, *Friday Night Lights: A Town, A Team and A Dream* (1990) is a book that chronicles a season in the life of Odessa, TX . . . "closed movie theaters, empty store fronts, for-sale signs everywhere - this is

Odessa, but although it has seen better days it still has a dream. The dram comes to life once a week every fall, when the Panthers of Permian High School take the football field under the Friday night lights. MO-JO! MO-JO! The haunting cheer rocks the stadium filled with 20,000 fans, who are there not only to root for their beloved team, but to live out their own hopes and aspirations. Friday Night Lights is about race, politics, economics, and education. It is about young lives whose course may be determined for good before they've really begun.

<sup>28</sup> Failure is defined as achieving a grade of less than 70 on a scale of 100.

<sup>29</sup> See Texas Education Code Annotated § 21.920 (Vernon's), See also Walter T. Champion, Jr. No Pass, No Play: Texas Style, 5 Entertainment & Sports Lawyer 5 (Fall, 1986); Walter T. Champion, Jr. No Pass, No Play: Texas Courts Tackle Litigation Crated by Education Reform, 23 Houston Lawyer 22 (May-June 1986); and Walter T. Champion Jr., No Pass Legislation and the Dilemma of the Student Athlete, 1 Strategies: A Journal for Physical and Sports Educators 9 (June 1988); No Pass Rule Hurts Teams, The Houston Chronicle 5C (October 21, 1988); Carter Star Ineligible, TEA Official Testifies, The Houston Chronicle 7C (December 2, 1988); Judge Recessed Carter hearing Until Monday, The Houston Chronicle 6C (December 3, 1988).

<sup>30</sup> West Virginia Code § 18-2-25 (1985); California Education Code § 35160.5 (1986).

<sup>31</sup> *Id.*

<sup>32</sup> California: *Initial eligibility*: . . . student must have achieved a 2.0 GPA in enrolled courses on a 4.0 scale at the conclusion of the previous grading period (8th grade) in order to be eligible. *Continuing eligibility*: A student is scholastically eligible if:

- ✓ The student is currently enrolled in at least 20 semester periods of work.
- ✓ The student passed at lease 20 semester periods of work at the completion of the previous grading period.
- ✓ The student is maintaining minimum progress toward meeting the high school graduation requirements as prescribed by the governing board.
- ✓ The student has maintained during the previous grading period a minimum 2.0 GPA, on a 4.0 scale, in all enrolled courses.

West Virginia: In order to participate in extracurricular activities to which this policy applies, a student must maintain a 2.0 average.

<sup>33</sup> Texas Education Code Annotated § 21.920 (a).

<sup>34</sup> See *Bailey v. Truby*, 321 S.E.2d 302 (W.Va.1984).

- <sup>35</sup> California Education Code §§ 35160.5(b) (2), (6).
- <sup>36</sup> Spring Branch, *Supra* note 8.
- <sup>37</sup> *See Id.*; *Associated Students, Inc. of California University v. National Collegiate Athletic Association*, 493 F.2d 1251 (9th Cir.1974); *Bell v. Lone Oak Independent School District*, 507 S.W.2d 636 (Tex.Civ.App.Texarkana 1974), set aside, cause dism'd, in 515 S.W.2d 252 (Tex.1975); *Kite v. Marshall*, 494 F.Supp. 227 (S.D.Tex.1980), revd 661 F.2d 1027 (5th Cir.1980), reh den 666 F.2d 591 (5th Cir.1980), cert den 457 U.S. 1120, 73 L.Ed.2d 1333, 102 S.Ct. 2934; *Sullivan v. University Interscholastic League*, 616 S.W.2d 170 (Tex.1981); *Grube v. Bethlehem Area School District*, 550 F.Supp. 418 (E.D.Pa. 1982); *Bailey v. Truby*, 321 S.E.2d 302 (W.Va.1984); *Eanes Independent School District v. Logue*, 712 S.W.2d 741 (Tex.1986); *State ex rel. Bartmess v. Board of Trustees*, 726 P.2d 801 (1986).
- <sup>38</sup> *See Supra* note 5.
- <sup>39</sup> *Spring Branch*, *Spra* note 8 at 560, 561; *Eanes Independent School District v. Logue*, 712 S.W.2d 741, 742 (Tex.1986).
- <sup>40</sup> *Champion*, *Supra* note 3 at 335.
- <sup>41</sup> *Sullivan v. University Interscholastic League*, 616 S.W.2d 170, 172 (Tex.1981).
- <sup>42</sup> *Champion*, *Supra* note 3 at 336.
- <sup>43</sup> *See Supra* note 5.
- <sup>44</sup> *See Supra* note 8 at 562.
- <sup>45</sup> *Id.*
- <sup>46</sup> *See Supra* note 33 at 316-318.
- <sup>47</sup> 494 F.Supp. 227, 233 (S.D.Tex.1980).
- <sup>48</sup> *Associated Students, Inc. of California State University v. National Collegiate Athletic Association*, 493 F.2d 1251, 1256 (9th Cir.1974); See also Curtis is discusses at length in Note, *Judicial Review of Disputes Between Athletes and the National Collegiate Athletic Association*, 24 Stan.L.Rev. 874 (1972).
- <sup>49</sup> *State ex rel. Bartmess v. Board of Trustees*, 726 P.2d 801 (1986).
- <sup>50</sup> *See Rugeley, Senate Trims Penalties in No-Pass Rule; Richards Backs Move*, The Houston Chronicle, at 1A (May 11, 1991); *Rugeley, Move to Ease No-Pass, No-Play, No-Play Forces Fight: Leaders Avow to Halt Effort to Change Law*, The Houston Chronicle at 29A (May 16, 1991); and

Rugeley, *No-Pass, No-Play Rivals Plan Assault: Education Bill Threatened by Deadline*, The Houston Chronicle at 31A (May 18, 1991).

<sup>51</sup> See Ramsey, *House Takes Punch Out of No-Pass Rule; Legislators Trim Penalty Time to Three Weeks Instead of Six*, The Houston Chronicle at 1A (May 13, 1993); and Rugeley and Keeton, *Schools, Crime Measure Occupy State Legislators: Senate Panel Retains Penalty in No-Pass Rule*, The Houston Chronicle at 25A (May 20, 1993).

<sup>52</sup> *Thompson v. Fayette County Public Schools*, 786 S.W.2d 879 (Ky.App.1990); See generally, Champion, *The Texas 'No Pass, No Play' Controversy*, 14 T. Marshall L. Rev. 27 (Fall 1988 - Spring 1989).

<sup>53</sup> *Thompson*, Supra note 51 at 881.

<sup>54</sup> Table 1 Supra at 13.

<sup>55</sup> See Supra note 25.