

NCAA Transfer Rule Ripe For Reform Despite Court Success

By **Zachary Zagger**

Law360 (March 13, 2018, 7:15 PM EDT) -- The NCAA continues to succeed in litigation challenging its restrictions on college basketball and football players' ability to transfer schools, but experts say there is still pressure to reform what is increasingly seen as a too-harsh system.

Last year the National Collegiate Athletic Association **formed a working group** comprising college and athletic department administrators and some student-athletes to look at the current transfer rules pertaining to Division I basketball and football and propose reforms. A council overseeing Division I rules is set to vote on a package of proposed rule changes **as early as June**.

Generally, student-athletes looking to transfer have to seek permission to speak with other schools, and if the athletes do transfer, they must sit out a "year in residence" at their new school before they can play, thus eating into the five-year clock a player has to complete four years of college athletics eligibility. But this rule does not apply to all college sports, and waivers are handed out only in special circumstances, which has some calling for a more consistent standard.

The rule is at the center of several lawsuits, including a **putative antitrust class action** currently before the Seventh Circuit brought by former Northern Illinois University punter Peter Deppe, who says the rule cost him a chance to continue playing Division I football after his coach rescinded his scholarship.

Deppe alleges that he had an offer to play at the University of Iowa, another school in the Football Bowl Subdivision and in the Big Ten Conference, but that the offer was contingent on his being able to play immediately.

Deppe's case was **dismissed** by an Indiana federal court, as was a **similar lawsuit**, and experts say Deppe faces an uphill battle in the Seventh Circuit.

While the NCAA has been successful in defending against such legal attacks to many of its rules, experts say there is a growing perception that the transfer rule is inequitable for student-athletes, particularly as coaches have free rein to move from school to school.

This is especially true, some say, as there is the looming potential that many schools could face penalties as part of an ongoing FBI corruption probe that could leave schools with potential NCAA sanctions such as postseason bans that could prevent current players from being able to play in bowl games or March Madness. That means some athletes could be forced to suffer penalties for misconduct they may have had nothing to do with.

"As that looms overhead, you're going to have a number of kids caught in a situation they did not create and have to serve a penalty ... that is not going to serve a lot of folks well," said sports attorney Tyrone Thomas, a member at Mintz Levin Cohn Ferris Glovsky and Popeo PC.

Thomas said it used to be that if a current player suffered penalties for things that had happened prior, there was the thought that "you sort of signed on for this."

"I think there is an increasing public view, and perhaps the court's view, we'll see, that there is something not quite equitable about that," Thomas said.

The NCAA says the year-in-residence rule is designed to allow a transferring student to become comfortable at the new school and is meant to encourage transfers motivated by academics as well

athletics, according to NCAA materials. There is a belief that players who transfer schools are less likely to graduate and may be transferring just to get more playing time, not necessarily to get a better education.

But the NCAA may be further facing internal pressure from schools and their coaches, who want more flexibility to adjust their rosters, according to University of Illinois College of Law labor law professor Michael H. Leroy.

"Coaches are under more pressure to deliver immediate results, and that means they are encouraged to drive off players who 'don't fit their system' — a euphemism for the fact that players were part of the reason the previous coach was fired," Leroy said. "I think schools and conferences are recognizing that it's in their interest to facilitate a certain amount of roster turnover to rebuild their rosters."

This is the subject of **an ongoing lawsuit** by former Northwestern University men's basketball player Johnnie Vassar, who alleges he was ostracized from the team in an effort to get him to quit to free up the spot for another player. Part of why he could not leave was the restrictions on his ability to play upon transferring.

The NCAA said in February that it's considering more exceptions to the year-in-residence rule for athletes who "meet specific, high-achieving academic benchmarks" and in cases where a head coach who recruited an athlete leaves the school with the caveat that the athlete cannot go to the school where the coach goes.

But the "working group is not considering — and never entertained — a model that would allow all student-athletes to transfer and compete immediately," the NCAA said.

Such reforms address part of the issues but might make it even harder to challenge the restrictions as an antitrust violation, experts say.

"Schools and conferences don't want to go back to the days when students lagged academically, left one school because of grade problems and showed up at another school," Leroy said. "This type of transfer rule also offers a high degree of protection against future antitrust litigation because it emphasizes the student part of the student-athlete equation."

Another proposal from the Big 12 Conference uncovered by CBSSports focuses on removing the requirement that athletes receive permission.

Authored by two faculty athletics representatives — Jeremy Counseller, a law professor at Baylor University, and Tim Day, a professor of molecular pharmacology at Iowa State University — the proposal calls for allowing athletes to transfer without their original school's permission if the coach leaves or if the school faces NCAA sanctions.

While this would give individual athletes more flexibility, the proposal admittedly "eschews a system in which all student-athletes are eligible for competition immediately after transfer."

Thomas said a free-for-all system might not be the best, noting that there may be reasons in the best interest of a student that a school would want to deny a transfer.

Still, he said, the NCAA could make some significant and needed changes to the current system to make things more clear, a move that would be felt across Division I athletics.

"Quite frankly, this all takes it out of the court's hands," Thomas said. "This handling of it ... helps from a legal perspective in the sense that we are not being any more restrictive than necessary given the concern."

--Editing by Edrienne Su.