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Akuoma C. Nwadike, Ashley R. Baker, Velina B. Brackebusch, and Billy J. Hawkins, *Institutional Racism in the NCAA and the Racial Implications of the "2.3 or Take a Knee" Legislation*, 26 Marq. Sports L. Rev. 523 (2016)
Available at: <http://scholarship.law.marquette.edu/sportslaw/vol26/iss2/13>

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INSTITUTIONAL RACISM IN THE NCAA AND THE RACIAL IMPLICATIONS OF THE “2.3 OR TAKE A KNEE” LEGISLATION

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I. INTRODUCTION

Academic reform has been an ongoing effort by the National Collegiate Athletic Association (NCAA) since its inception. One of the recurring challenges it has faced has been the setting of employable and achievable academic standards for all athletes seeking to compete at one of its member institutions, whether at the Division I, II, or III level. The primary goals have been to establish academic standards and to inform and reaffirm the NCAA’s commitment to academic excellence. Also of concern with setting these academic standards is the need to quiet the critics who question whether athletes are academically prepared to enter these institutions and thus, receive a quality education—especially at the Division I Football Bowl Subdivision (FBS) level. There have been several efforts to establish academic standards that preceded the current “2.3 or Take a Knee” policy.¹

Historically, the NCAA has implemented many reforms to reaffirm its commitment to education including the following:

- A 1.600 rule for initial academic eligibility in 1965;²
- The abolition of the 1.600 legislation in 1973;³

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1. *2.3 or Take a Knee*, NCAA.ORG, <http://www.ncaa.org/static/2point3/> (last visited June 9, 2016). “2.3 or Take a Knee” is the colloquial phrase used to summarize the new Division I initial eligibility requirements for prospective student-athletes.

2. JOSEPH N. CROWLEY, *IN THE ARENA: THE NCAA’S FIRST CENTURY* 87 (2006).

3. *Id.* at 96.

- The reorganization of the NCAA into three divisions in 1973;⁴
- In 1983, Proposition 48 required prospective student-athletes to reach specified grade-point averages and standardized test scores;⁵
- In 1989, Proposition 42 withheld athletically-related aid from partial academic qualifiers;⁶
- The rescinding of Proposition 42 in 1990;⁷
- In 1992, Proposition 16 established an initial-eligibility index based on standardized test scores and grade-point averages;⁸
- In 2003, the number of core courses increased from thirteen to fourteen, the partial qualifier was abolished, and the minimum standardized test score requirement was deleted;⁹
- Finally in 2005, the Academic Progress Rate (APR) subjected teams that fail to meet established minimum scores to possible penalties ranging from loss of scholarships to postseason bans and membership restrictions.¹⁰

These are some of the major efforts that have been implemented by the NCAA to increase academic standards among athletes and potentially ensure success in their academic careers from matriculation to graduation.

With the increased migration of black athletes from Historically Black Colleges and Universities (HBCUs) to Historically White Colleges and Universities (HWCUs) during the late 1970s and early 1980s, academic standards employed during and since that time have specifically had an adverse impact on the enrollment of black male athletes participating in the

4. *Id.* at 117.

5. *Id.* at 161.

6. *Id.* at 184.

7. *Id.* at 189.

8. *Id.* at 192.

9. Bond, Schoeneck & King, PLLC, *NCAA Division I Strengthens Academic Eligibility Standards*, COLLEGIATE SPORTS GRP. NEWSLETTER 1–2 (Oct. 2002), <http://www.bsk.com/site/files/10-2002%20NL%20Collegiate%20Sports.pdf>.

10. CROWLEY, *supra* note 2, at 228.

revenue-generating sports of men's basketball and football.¹¹ For the upcoming implementation of the new initial-eligibility standard, referred to as 2.3 or Take a Knee,¹² the NCAA must consider the policy's potential for reigniting and reaffirming institutional racist practices in the organization's attempts to combat academic criticism. A review of its history exposes how many of its choices, while supposedly appeasing opponents of the organization's alleged commitment to athletics over academics, result in the disproportionate alienation of African-Americans from higher education opportunities. Thus, the potential impact of this new policy calls into question the NCAA's racial integrity towards the population that makes up the largest percentage of revenue-generating sports. To prevent institutional racist practices, the NCAA should work with its members to provide equitable eligibility opportunities for all student-athletes, but particularly for the African-American students participating in men's basketball and football, who have historically been affected the most, and if implications hold true, will see their potential to contribute to college athletics drop steeply by the fall semester of 2016.

II. A NEW NCAA DIVISION I ELIGIBILITY STANDARD

For the 2016 incoming class of student-athletes, NCAA initial eligibility standards have once again tightened. A freshman athlete must enter with a minimum 2.3 high school core GPA and a corresponding standardized test score of 900 on the math and reading sections of the SAT, or a 75 combined score on the English, math, science, and reading sections of the ACT, to be immediately eligible for competition; the previous standard, which required a minimum core GPA of 2.0 and a 1010 on the SAT (or 86 on the ACT), will result in an academic redshirt year,¹³ allowing the student-athlete to receive athletic aid and practice with the team during the first academic term.¹⁴

11. *See generally id.* Though college athletics as a whole has grown in popularity, only Division I basketball and football continuously generate revenue in the multimillion-dollar range. The bulk of the revenue comes from schools participating in five FBS conferences: SEC, ACC, Pac-12, Big Ten, and Big 12. Though universities outside of these conferences generate massive revenue as well, specifically the football and basketball teams in the AAC and the basketball teams in the Big East Conference, the majority of the revenue sports teams in these conferences are populated by African-American athletes, many admitted through special admissions.

12. *2.3 or Take a Knee*, *supra* note 1.

13. *See Test Scores*, NCAA.ORG, <http://www.ncaa.org/student-athletes/future/test-scores> (last visited June 9, 2016).

14. Michelle Brutlag Hosick, *New Eligibility Standards Start in 2016*, NCAA.COM, <http://www.ncaa.com/news/ncaa/article/2012-04-26/new-eligibility-standards-start-2016> (last updated Apr. 26, 2012) (providing a detailed account of the new academic requirements for prospective college student-athletes seeking admission beginning in Fall 2016). A 2.0 GPA in core courses will

A student-athlete on probation can earn additional practice time for the next term by passing nine semester hours, or eight quarter hours.¹⁵ Additional changes include the need for ten of sixteen core courses to be completed before the start of a prospective student-athlete's senior year of high school, seven of which must be in English, math, and science; otherwise, automatic competition eligibility will be revoked.¹⁶ According to the NCAA, the intention is to ensure that prospective athletes are just as prepared for school as they are for their sport, and it suggests that the initial impact of the initiative will decrease with time as incoming students adjust.¹⁷ However, NCAA research shows that men's basketball and football players will feel the most significant immediate impact.¹⁸ Had these new requirements gone into effect during the 2010–2011 academic year (just prior to its announcement), 41% of men's basketball and 35% of football incoming players would have been deemed ineligible to compete.¹⁹ What is disconcerting is how this will likely disproportionately impact the African-American population of the incoming class in revenue sports. Of all Division I men's basketball and football players, African-Americans make 60.9% and 46.8% of the populations, respectively.²⁰ However, this is not surprising to critics who point to a long-implied covert, and even overt, history of racism inherent in the development of HWCUs (also referred to as predominantly white institutions (PWIs)) and the NCAA's handling of academic policies that largely concern its African-American athletes.

still grant a scholarship but will bar the athlete from immediate athletic participation. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. NCAA DIVISION I INITIAL-ELIGIBILITY STANDARDS, SUPP. NO. 20, 4–5, <http://www3.nd.edu/~ncaacomp/documents/IEExecutiveSummary.pdf> (last visited June 9, 2016). Much has been written about how, with each new academic standard, a large percentage of student-athletes from previous years would have been deemed ineligible. The stated percentages are the predictions, based on available data, for the negative impact the new standards will have on the incoming 2016 class.

20. Albert Y. Bimper Jr., *Game Changers: The Role Athletic Identity and Racial Identity Play on Academic Performance*, 55 J.C. STUDENT DEV. 795, 795 (2014). African-Americans make up the largest percentage of men's basketball teams, and a large percentage of football teams, at some of the nation's most prestigious universities, private and public, though they only make up single-digit percentages at most of these same institutions as a whole.

III. NCAA POLICIES: A TROUBLED HISTORY

A. *Exclusion and Overt Discrimination*

Beginning in 1852, college athletics have been a vital part of the postsecondary education experience;²¹ however, so has racial discrimination and prejudice.²² Throughout the late 1800s and into the 1900s, legal segregation limited African-American participation at the most prominent colleges in the nation.²³ Though a few were afforded playing opportunities at PWIs in the North, the Southern PWIs barred them from entry and participation.²⁴ Statutes existed prohibiting athletic competition between black and white athletes, relegating African-Americans to playing in less formally organized settings.²⁵ In some universities, even if African-Americans were admitted, the African-American students were still barred from athletic participation.²⁶ In Northern schools, black athletes often had to sit out during games against Southern institutions.²⁷ Additionally, many Northern institutions adopted quotas to limit the number of black athletes on a team, and

21. See Timothy Davis, *The Myth of the Superspade: The Persistence of Racism in College Athletics*, 22 *FORDHAM URB. L.J.* 615, 623 (1995). College athletics predates the NCAA. See generally *id.* The organization was created as a unifying body that allowed voluntary membership. The first established and recorded intercollegiate competition was a crew match between Harvard and Yale. *Id.* at 623 n.33.

22. See *id.* Racial discrimination in intercollegiate sport is interlinked with the discrimination African-Americans receive as part of America's historical and social context, not independent. See *id.*

23. *Id.* at 624. The Jim Crow laws established the "separate but equal" regulations that segregated white and black interaction in almost all realms, including most academic institutions.

24. See *id.* at 626. In general, African-Americans were prohibited from athletic participation at Catholic universities; they also could not participate in sports at schools that did not admit black students. *Id.*

25. See *id.* at 625–26. The University of Kansas limited African-Americans' rights to most extracurricular activities, including the universities' athletic teams, with the athletic director stating that no person of color would play on a team while he was in charge. *Id.* at 626–27.

26. See *id.* at 626. "[B]lacks were denied practically every right except that of attending classes." *Id.* at 627 (quoting RAYMOND WOLTERS, *THE NEW NEGRO ON CAMPUS: BLACK COLLEGE REBELLIONS OF THE 1920S* 316 (1975)).

27. *Id.* at 628.

[M]ost northern teams with blacks on their rosters either did not schedule games against southern teams or would leave their African-American players at home when the team traveled south. It has also been suggested that a promise to withdraw voluntarily from games against southern schools was an element of the consideration that some northern institutions extracted from their black athletes.

Id.

the only students allowed were expected to be “exceptionally talented.”²⁸ Even if they were allowed to partake in athletic participation, racism still ran rampant.²⁹ Sport participation was limited to track and field and similar sports that did not require “intimate physical contact” with white athletes.³⁰ Many associate the social pariah status of the African-American college athlete with their academic neglect and underperformance: they were advised to take courses with little merit and focus on gaining and maintaining eligibility.³¹

B. Covert Practices? Academic Policy Beginnings: Props 48 and 42

College football and basketball were white men’s games from their beginnings until the 1970s.³² And during the early years, academic policies were light. “[I]n 1948 the NCAA instituted the ‘sanity code’” that ensured academic integrity as one of its components; it was quickly eliminated in 1951.³³ In 1959, the NCAA required twelve-credit semesters. As stated earlier, 1965 saw the introduction of a 1.6 minimum GPA for continued eligibility. Prospective student-athletes required a high school GPA of 1.6 and an SAT or ACT score that predicted at least a 1.6 GPA as a college freshman.³⁴ This policy remained in place for a decade. Until the 1970s, the NCAA did not undergo any additional academic reforms. During these early years, most sports, including men’s basketball and football, were dominated by white athletes. However, as the African-American presence in college athletics began to rise, there was a simultaneous decrease in academic standards and increase in academic exploitation.³⁵ In 1972, the 1.6 rule was abolished leaving virtually no academic standards for incoming student-athletes, other

28. *Id.* at 629–30.

29. *See generally id.*

30. *Id.* at 631–32. “These sports were viewed as not involving the type of intimate physical contact required by basketball and swimming.” *Id.* at 632.

31. *See id.* at 631–33. The isolation that African-Americans faced on college campuses caused not only emotional pain but frustration that manifested in poor academic performance; institutions focused on helping them maintain athletic eligibility at best. *Id.*

32. *See* Delgreco K. Wilson, *Black Athletes, Race and the Rise of NCAA Eligibility Requirements*, THE BLACK CAGER (Sept. 18, 2014), <http://delgrecowilson.com/2014/09/18/black-athletes-race-and-the-rise-of-ncaa-eligibility-requirements/>. Because of Jim Crow segregation, most African-Americans only participated in athletics at historically black institutions that lacked the organization and esteem of their PWI counterparts.

33. Phillip C. Blackman, *The NCAA’s Academic Performance Program: Academic Reform or Academic Racism?*, 15 UCLA ENT. L. REV. 225, 230–31 (2008).

34. Michael J. Mondello & Amy M. Abernethy, *An Historical Overview of Student-Athlete Academic Eligibility and the Future Implications of Cureton v. NCAA*, 7 VILL. SPORTS & ENT. L.J. 127, 128 (2000).

35. *See id.* at 128–29.

than graduating from high school. A year later, the minimum initial eligibility GPA was raised to 2.0. During the same time period, in 1974, freshmen were granted eligibility to participate in the revenue-generating sports of men's basketball and football. As the popularity of college athletics continued to rise with the addition of a new crop of players, the NCAA decided that a uniform academic system was needed to reflect the academic standards of its member institutions' missions. The organization was determined to avoid the reputation of allowing its athletes to be seen as less than serious students.³⁶ The NCAA wanted to place some of the academic burden on the institutions by mainstreaming athletics into the schools' educational missions; administrators and faculty would have to share in the responsibility of upholding policies.³⁷ Together with university officials, the NCAA set forth its first full-fledged reform for incoming freshmen academic guidelines.³⁸ However, the NCAA's position was not widely accepted.

Some critics believed that the need for heightened standards was influenced by the influx of African-American athletes entering college athletics. As the 1970s continued, African-Americans moved towards becoming the majority in the revenue-producing sports of men's basketball and football; by the 1980s, they were dominant.³⁹ Whether the NCAA intended for its new standards to disproportionately affect African-Americans negatively is a constant source of contention. But, as accumulated knowledge and research made it clear that these policies would negatively impact African-American athletes, the organization moved forward with implementing requirements that threatened African-American sport participation and postsecondary enrollment while maintaining that no racial discrimination was intended.⁴⁰

The problems began with Proposition 48, or Prop 48 for short. Implemented in 1986, Prop 48 required an incoming GPA of 2.0 and an SAT (reading and math) or ACT composite test score of 700 or 15, respectively, to avoid an automatic year of ineligibility.⁴¹ Additionally, the 2.0 GPA minimum

36. *Id.* at 127. College athletics worked adamantly to avoid the "dumb jock" stereotype that was developing with the growing popularity of college sports and the number of academic concessions being made for the student-athletes. *Id.*

37. *Id.* at 129.

38. *Id.* at 130. Proposition 48 would see widespread backlash, especially from the African-American community. *Id.* at 133.

39. *See* Wilson, *supra* note 32 (explaining dominant in the sense of making up the majority of the teams at most institutions while only being a disproportionately small percentage of the general student body).

40. *See id.* The NCAA held steadfast to its claim that whether or not African-Americans would be harmed by its policies, any of these negatives were not intended by the new academic standards. *Id.*

41. Mondello & Abernethy, *supra* note 34, at 131.

had to be the result of a cumulative average from eleven core courses in high school.⁴² The year prior to its introduction, between 40% and 60% of entering student-athletes in the average Division I-A men's basketball and football programs scored less than 700 on the SAT.⁴³ Consequently, over the next four years, there was a drop in African-American participation as they tried to adjust to the changes.⁴⁴ Proponents argued that athletes would rise to the occasion to meet the new standards or have a year to acclimate to college while having more time to focus on problem courses.⁴⁵ Opponents could not see beyond the obvious: the new test score standards had the largest effect on the black student-athletes, which eliminated a large percentage, 45%, of the eligibility pool that could have graduated under the old standards.⁴⁶ The NCAA also had to face the criticism of the actual test makers. George Hanford, the then-president of the College Board, stated that it was indisputable that African-Americans performed worse on standardized tests because of a lack of educational privilege and that using the SAT as a minimum standard was racist and discriminatory.⁴⁷ Additionally, the score cutoff violated SAT science; the test has a 50-point standard deviation, meaning that a 700 should be calculated the same as a score as low as 650.⁴⁸ Hanford concluded by stating that the only purpose of the SAT is to be a first-year college predictor and that the way the NCAA was using the

42. Blackman, *supra* note 33, at 231. GPAs were calculated using core courses to try to create consistency nationwide; core course curriculums are much more standardized and can be monitored in ways that electives cannot be.

43. Mondello & Abernethy, *supra* note 34, at 131.

44. *Id.* at 131–32. The percentage of African-American student-athletes who met the new qualifications was disproportionately less than their white counterparts.

45. *Id.* at 132. The NCAA believed that African-American student-athletes would eventually adjust to the new standards and rates would normalize.

46. *See id.* at 133.

47. *Id.* at 134.

It is an undisputed fact that minority candidates earn significantly lower scores on the average because many of them are less privileged educationally and socio-economically than whites. Proposition 48 will have a differentially severe impact on the aspiring athletes among blacks, but not because of bias in the SAT, but because of the educational deficit that exists in this country. So, it is [quite] obvious that the use of SATs to help set minimum academic standards for freshmen is patently discriminatory and racist in its effects. Its use is a disservice to minority athletes.

HAROLD J. VANDERZWAAG, POLICY DEVELOPMENT IN SPORT MANAGEMENT 49 (2d ed. 1998); *Accord* Mondello & Abernethy, *supra* note 34, at 134.

48. Mondello & Abernethy, *supra* note 34, at 134. "A second problem with the use of the SAT minimum test score was that the use of this standard violated the scientific and philosophical principles upon which the SAT was based." *Id.*

assessment contradicted its purpose; it is meant to be one factor in the college admissions process.⁴⁹ More importantly, there was no empirical evidence for the 700 absolute cutoff score.⁵⁰

The College Board was not the only vocal opponent. Two coaches shared their disdain for the new standards. Coach John Chaney of Temple University accused the NCAA of racism, stating that the new rules punished African-Americans.⁵¹ Coach John Thompson, Jr. of Georgetown University called for the NCAA to review the effects of its policy and change the rules.⁵² During the same year, the organization began the revision process, but even with the direct evidence and accusations of the discriminatory practices that resulted from the implementation of Prop 48, the NCAA continued to raise its standards, asserting that its only mission was to combat the “dumb jock” stereotype.⁵³

In 1989, that revision became the short-lived Prop 42 and was controversial from the start. It was written and sponsored by the Southeastern Conference (SEC), the last major conference to open up its teams to black athletes, which vowed implementation with or without NCAA adoption.⁵⁴ Prop 42 created the partial qualifier: a student-athlete who met at least one of the eligibility benchmarks—the 2.0 core GPA, the test score requirements, or the completion of eleven core courses—could receive need-based, not athletically-based, financial aid.⁵⁵ A non-qualifier could not receive any aid

49. *Id.* at 134–35.

50. *Id.* at 135.

Critics of Proposition 48 cited evidence from a new study that showed there was no statistical or educational rationale for using standardized test scores as an absolute cutoff for eligibility. From the outset, advocates of African-American student-athletes have argued that the tests were culturally biased, while testing-company officials have insisted that their tests were never intended to serve as an absolute cutoff. Even many of the rule's supporters acknowledge that the decision to set the eligibility cutoff at 700 was not based on empirical knowledge.

Id.

51. Wilson, *supra* note 32.

52. *Id.*

53. See Mondello & Abernethy, *supra* note 34, at 127, 135. Prior to Prop 48, the single condition of needing to graduate from high school to be a college student-athlete did not help the negative stereotypes cast on college athletics. *Id.* at 129.

54. Wilson, *supra* note 32.

55. Mondello & Abernethy, *supra* note 34, at 135. Accord Blackman, *supra* note 33, at 231–32. “[A] ‘partial qualifier’ . . . ‘may receive institutional financial aid that is not from an athletic source and is based on financial need only, consistent with institutional and conference regulations . . . during the first academic year’” Mondello & Abernethy, *supra* note 34, at 135 (quoting 1995–96 NCAA DIVISION I MANUAL art. 14.3.2.1.1 (1995)).

during the first academic year.⁵⁶ Ultimately, the NCAA reverted back to its revision process. Its next reform, Prop 16, was introduced for the 1996–1997 academic year. Prop 16 would not only prove to be one of its most controversial provisions but would also result in a lawsuit that publicly had student-athletes accuse the organization of the racism that many believed it had been operating under for years.

C. Implicit Racism? Prop 16 and Cureton v. NCAA

Prop 16 took Prop 48 and virtually raised all of its standard requirements. The initial eligibility GPA increased from a 2.0 to a 2.5, and the core course total increased from eleven to thirteen.⁵⁷ It was also Division I's first introduction to the sliding scale that was to "make the initial eligibility index more malleable."⁵⁸ The 2.5 GPA aligned with a 700 or 18 on the SAT or ACT, respectively. If the student's GPA was below this, the standardized test score minimum adjusted accordingly. The lowest minimum GPA, a 2.0, required a 1010 on the SAT or ACT sum of 86 to preserve athletic eligibility.⁵⁹ Meanwhile, with a 2.5 GPA, a student could compete with an 820 SAT or 68 ACT sum.⁶⁰ As the GPA increased, the test score decreased and vice versa.

Partial qualifiers were still allowed under this proposition. "[A]n SAT score between 720 and 810 (ACT [sum] score between 59 and 67) and a core GPA that produces a GPA-test combination score comparable to that required of qualifiers" could grant a student athletic financial aid but bar athletic participation.⁶¹ As expected, Prop 16 closed college doors for many African-American student-athletes.⁶² The disproportion was obvious: while only 46.4% of black high school seniors met the requirements, 67% of white seniors were eligible. Now, with a number of direct incidents that markedly affected black student-athletes, a few students decided it was time to seek justice in court.

In 1997, four African-American student-athletes challenged the NCAA's

56. Mondello & Abernethy, *supra* note 34, at 135. ("[A] student-athlete who achieved neither the GPA nor SAT/ACT benchmarks, 'shall not be eligible for . . . institutional financial aid during the first academic year.'" *Id.* (quoting 1995–96 NCAA DIVISION I MANUAL art. 14.3.2.2.1 (1995)).

57. *Id.* at 135–36.

58. Blackman, *supra* note 33, at 233.

59. Mondello & Abernethy, *supra* note 34, at 136.

60. *Id.*

61. *Id.*

62. *See* Blackman, *supra* note 33, at 233. "Despite this sliding scale, a study by The National Center for Education Statistics indicated that Prop. 16 significantly reduced opportunities for all student-athletes, particularly African-Americans." *Id.*

minimum cutoff score with the primary question of whether Proposition 16 violated Title VI of the Civil Rights Act of 1964.⁶³ The plaintiffs claimed that the use of a cutoff had “an unjustified, disparate impact on African-American student-athletes.”⁶⁴ The district court found for the plaintiffs initially.⁶⁵ There were three main components to address in the case: (a) if the NCAA was subject to Title VI regulations, (b) if minimum test scores created a disparate impact among minorities students, and (c) if Prop 16 justified an educational necessity.⁶⁶ In response to the first component, the court held that because the NCAA received federal funds, even if through indirect means, it was subject to Title VI regulation because those funds were used to sponsor a program.⁶⁷ For the second part, the court held that even though there was some “beneficial impact” to Prop 16 (i.e., the increased graduation rates), that was not the argument here, and this benefit could not overcompensate for the disproportionately large, negative impact affecting the same group.⁶⁸ The court concluded the case by responding to the third argument: closing the graduation gap between white and black students was a real educational concern, but this “back-end” benefit could not undo the underlying effects of Prop 16 and its attempts to use a “bottom-line” defense to justify its practices.⁶⁹ This victory for the four student-athletes was short-lived, however, as it was reversed in December 1999 in *Cureton II*.⁷⁰ The Third Circuit ruled that “section 601 of Title VI did not preclude recipients of federal funds from [discriminatory practices against] programs not

63. Mondello & Abernethy, *supra* note 34, at 139 (citing *Cureton v. NCAA (Cureton I)*, 37 F. Supp. 2d 687, 689 (E.D. Pa. 1999)).

Title VI of the Civil Rights Act of 1964 provides, “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, or be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 42 U.S.C. § 2000d (1964) (prohibiting discrimination on basis of race by any program or activity receiving Federal financial assistance).

Id. at 139, n.89.

64. *Id.* at 139–40 (citing *Cureton I*, 37 F. Supp. 2d at 689).

65. *Cureton I*, 37 F. Supp. 2d at 715.

66. Mondello & Abernethy, *supra* note 34, at 139–45.

67. *Id.* at 142; *see also Cureton I*, 37 F. Supp. 2d at 694.

68. Mondello & Abernethy, *supra* note 34, at 144 (citing *Cureton I*, 37 F. Supp. 2d at 700). “The court, however, found the NCAA’s argument unpersuasive, determining that a selection practice having a disproportionate ‘beneficial’ impact upon a specific group could compensate for any disproportionate adverse impact on that same group.” *Id.*

69. Mondello & Abernethy, *supra* note 34, at 145 (citing *Cureton I*, 37 F. Supp. 2d at 705).

70. *Cureton v. NCAA (Cureton II)*, 198 F.3d 107, 118 (3d Cir. 1999).

receiving the federal funding.”⁷¹ Although NCAA institutions receive federal funds, the NCAA itself does not, and the NCAA does not actually control its member institutions; members have the option to withdraw from the organization if they do not want to accept any sanctions or follow its policies.⁷²

Though defeated, *Cureton I* is still an important legal matter in that it opened the doors to athletes questioning the NCAA’s policies, especially the black athletes who seemed to face more institutional racism with every new NCAA policy.⁷³ Coaches and athletes inquired into the creators of the rules. They accused the NCAA of using its policies to appease racist university administrators and supporters while pretending to be inclusive but actually reducing the black presence in college athletics, and college in general.⁷⁴ Opponents wondered whether rules were being created in a vacuum.⁷⁵ Each reform harmed more and more of the economically and academically disadvantaged.⁷⁶ The Black Coaches Association (BCA) derided the lack of African-American representation in the rule-making body, even though the rules would disproportionately affect athletes of color; the NCAA could not hide that its policies implicated the organization in racist practices.⁷⁷ Proposals to eliminate standardized test scores were rejected, as were proposals to redefine partial qualifiers.⁷⁸ In place of Prop 16, there was a call for using classroom performance—educators believe it is the best indicator, and standardized tests have shown to reduce African-American access to college. However, the NCAA defends its academic legislation, reiterating that the legislation is not about race but stronger educational values that African-Americans will eventually rise to.⁷⁹ But does this simply shift blame from the NCAA to the athletes while the proportion of whites to blacks

71. Mondello & Abernethy, *supra* note 34, at 147 (citing *Cureton II*, 198 F.3d at 115).

72. *Id.* at 148.

73. *See generally id.* at 148–50.

74. *See* Wilson, *supra* note 32.

75. Timothy Davis, *African-American Student-Athletes: Marginalizing the NCAA Regulatory Structure?*, 6 MARQ. SPORTS L.J. 199, 203 (1996) (accusing the NCAA of adopting legislation that harmed economically disadvantaged and academically at-risk student-athletes and referring to reforms as “knee-jerk” reactions).

76. *See id.* at 203–04. As a way to try to draw attention to their issues, the Black Coaches Association (BCA) threatened to organize a series of protests and boycotts, including coaches and players, in 1993; the threats never came to fruition after behind-the-scenes negotiations halted the actions, but the BCA succeeded in raising issues of racial inequality in intercollegiate athletics. *Id.*

77. *See generally id.* at 204, 212–26.

78. *Id.* at 208–09.

79. *See id.* at 210–11.

continues to increase?⁸⁰ The next major lawsuit against the organization set out to prove the NCAA was guilty of intentional discrimination.

D. Intentional Discrimination: Pryor II and More Policy Changes

Pryor v. NCAA was significant for the changes it would bring to the NCAA's academic policies, for once resulting in the loosening of the academic restrictions.⁸¹ For the first time, the organization faced charges of deliberate and purposeful racially discriminatory practices. Two African-American plaintiffs contended that Prop 16's true goal was to "screen out" and reduce the number of possible athletic scholarships for black students, violating Title VI of the Civil Rights Act of 1964 and 42 U.S.C. § 1981.⁸² The district court dismissed the case, holding that the plaintiffs could not be provided a remedy for their claim of "deliberate indifference" under Title VI and failed to adequately allege intentional discrimination under the section 1981 claim.⁸³ However, this holding was later reversed by the Third Circuit, which held that the plaintiffs had a sufficient claim for purposeful discrimination under Title VI and section 1981.⁸⁴ This case set a new precedent with the circuit court's affirmation sustaining the long-running argument that NCAA academic policies established a standard of institutional racism. *Pryor II* "reopened possibilities for plaintiffs to sue the NCAA for discrimination."⁸⁵ Following the court's decision, the NCAA had no choice but to revise its policies once more, this time relaxing its standards to protect itself from continued racist accusations.

Kelly Pryor and Warren Spivey were two African-American athletes who each signed a National Letter of Intent to receive athletic scholarships at Division I institutions.⁸⁶ However, both failed to meet the conditions of Prop 16, rendering their athletic scholarships void, and in February 2000, filed a lawsuit against the NCAA for intentional discrimination.⁸⁷ The plaintiffs

80. *See id.* at 211–12. "[H]eightening eligibility requirements are viewed as an easy means of shifting educational responsibility from universities to student-athletes." *Id.* at 212.

81. *See Pryor v. NCAA (Pryor II)*, 288 F.3d 548, 562 (3d Cir. 2002).

82. *See id.* at 552; *Pryor v. NCAA (Pryor I)*, 153 F. Supp. 2d 710, 711–12 (E.D. Pa. 2001); *see also* 42 U.S.C. § 1981 (2016).

83. *Pryor I*, 153 F. Supp. 2d at 716–19; Anneliese Munczinski, *Interception! The Courts Get Another Pass at the NCAA and the Intentional Discrimination of Proposition 16 in Pryor v. NCAA*, 10 VILL. SPORTS & ENT. L.J. 389, 394 (2003).

84. *Pryor II*, 288 F.3d at 562.

85. Munczinski, *supra* note 83, at 391. "Although the court did not settle the dispute, the opinion does suggest that purposeful discrimination suits may succeed against the NCAA in the future." *Id.*

86. *Id.* at 392 (citing *Pryor II*, 288 F.3d at 554–55).

87. *Id.* at 392–93 (citing *Pryor II*, 288 F.3d at 555). Kelly Pryor, while still in high school, signed a national letter of intent to play varsity soccer at San Jose State University; Warren Spivey signed to play football at the University of Connecticut. *Id.* at 392. However, both had their athletic scholarships

stated that although the NCAA purported the goal of Prop 16 was to improve African-American graduation rates, Prop 16 actually increased African-American athletic ineligibility and decreased the number of scholarships they received.⁸⁸ The plaintiffs stated that “the NCAA knew of and intended these effects.”⁸⁹ Under Title VI and section 1981, the plaintiffs sought relief for purposeful discrimination and deliberate indifference.⁹⁰ The court reviewed judicial guidelines to determine whether the NCAA’s policy qualified as intentional discrimination through a “facially neutral policy.”⁹¹ Unlike *Cureton I*, the plaintiffs could not claim discrimination based solely on a disproportionate, negative effect on a particular race; they had to prove intentional imposition of adverse effects on African-American student-athletes.⁹² Enough evidence existed to prove that the NCAA did explicitly consider race while creating and adopting Prop 16.⁹³ “The NCAA explicitly stated that one of the major goals of Proposition 16 was to increase the graduation rates of the African-American [student-athletes],”⁹⁴ and the plaintiffs provided evidence that the organization relied on research demonstrating that the increased academic standards of Prop 16 “would ‘screen out’ [a] number of African-American athletes who would [not] meet [this new]

revoked pursuant to NCAA Prop 16 regulations. *See id.* at 392–93. Pryor was granted partial qualifier status due to a learning disability allowing her to practice with the team but not compete. *Id.* at 393. Pryor initially sued under the American with Disabilities Act and Rehabilitation Act. *Id.* Spivey joined with her to bring suit for intentional discrimination under Title VI and § 1981. *Id.*

88. *Id.* at 393 (citing *Pryor II*, 288 F.3d at 552). “Pryor and Spivey admitted in their complaint that the purported goal of Proposition 16 was to improve graduation rates among black student-athletes. Yet, they asserted that Proposition 16 actually rendered an increased number of African-American athletes ineligible to participate in intercollegiate athletics and receive scholarships.” *Id.*

89. *Id.* (citing *Pryor II*, 288 F.3d at 552).

90. *Id.* at 394 (citing *Pryor II*, 288 F.3d at 557).

91. *Id.* at 402. “[The] plaintiff[s] must show that the relevant decisionmaker . . . adopted the policy . . . ‘because of,’ not merely ‘in spite of,’ its adverse effects’ [on a specific] group.” *Pryor II*, 288 F.3d at 562 (quoting *Pers. Adm’r of Mass. v. Feeney*, 442 U.S. 256, 279 (1979)).

92. *Compare Cureton I*, 37 F. Supp. 2d 687, 698 (E.D. Pa. 1999), with Munczinski, *supra* note 83, at 401–02. Because of *Cureton I*, the “plaintiffs ha[d] to show that the discrimination was intended, and not a mere by-product . . . to sustain a claim under § 1981 or Title VI.” Munczinski, *supra* note 83, at 402. “The mere awareness of the consequences of an otherwise neutral policy will not be sufficient to provide the basis for a Title VI and § 1981 suit.” *Id.* Pryor and Spivey would be entitled to relief if they could show that: (1) they belong to a racial minority group, (2) they are victims of an intent to discriminate on the basis of race by the defendant, and (3) “discrimination concerning one or more of the activities enumerated in § 1981” occurred. *Id.* at 403.

93. Munczinski, *supra* note 83, at 408 (citing *Pryor II*, 288 F.3d at 564). To recover any remedy, the plaintiffs “had to prove that the NCAA adopted Proposition 16 intentionally to impose adverse effects upon African-American student-athletes.” *Id.* (referencing *Pryor II*, 288 F.3d at 562). The Third Circuit believed there was enough evidence to show that “the NCAA expressly considered race when it adopted Proposition 16.” *Id.* (citing *Pryor II*, 288 F.3d at 564).

94. *Id.* (citing *Pryor II*, 288 F.3d at 564).

standard.”⁹⁵ According to the district court, the NCAA adopted Prop 16 in spite of this negative impact on African-American athletes, not because of the potential positive.⁹⁶ The appellate court inferred that the NCAA intended that Prop 16 would, at least in part, “reduce the number of African-Americans eligible for athletic scholarships.”⁹⁷ Although the court did not officially state that all of the NCAA’s intentions were “sinister” in its decision-making, the policy purposely discriminated against a group, rendering it void until the NCAA could provide evidence to the contrary.⁹⁸ By coming to this decision, the court held that the plaintiffs had a valid claim for purposeful discrimination; the second claim for deliberate indifference was unnecessary.⁹⁹

The NCAA understood the ramifications of such a decision. Faced with a public that saw it lose a case charging it with intentional racial discrimination, Prop 16 would have to undergo major renovations to avoid further claims of discrimination. For the African-American athletic population, it was a victory. After years of speaking out about racist undertones, and even overt discriminatory practices, the *Pryor II* decision gave credence to their claims. The NCAA’s history of racial discrimination would have to change by force, unless it wanted to spend years and money fighting cases. Following the appellate court’s decision, the NCAA amended the sliding scale for initial eligibility to reflect numbers that were less restrictive and discriminatory.¹⁰⁰ Simultaneously, the NCAA had to contend with ensuring that it was putting education first. The most recent policy change prior to the upcoming 2016 2.3 or Take a Knee policy came in 2003. This reform package purported to de-emphasize the importance of standardized tests. But, there would still be a sliding scale that weighed GPA and test scores, and the number of required core courses would see another increase.¹⁰¹ The NCAA and its ever-present balancing act, which now required explicit attention to whether its new practices could be deemed racially discriminatory, still seemed to always fall short of providing racial equality and opportunity.

95. *Id.* (citing *Pryor II*, 288 F.3d at 564).

96. *Pryor II*, 288 F.3d at 564.

97. Munczinski, *supra* note 83, at 409 (citing *Pryor II*, 288 F.3d at 564).

98. *Id.* (citing *Pryor II*, 288 F.3d at 566). The court stated that “although it was difficult to imagine that the NCAA embraced sinister motives, a policy that purposefully discriminates on account of race is presumed void unless it survives strict scrutiny.” *Id.* The plaintiffs’ claim would remain until the NCAA could produce facts that show it did not intend race-based discrimination. *Id.* (citing *Pryor II*, 288 F.3d at 566).

99. *Pryor II*, 288 F.3d at 564, 567; *see also* Munczinski, *supra* note 83, at 410.

100. Blackman, *supra* note 33, at 235. “After *Pryor II*, the NCAA lowered the stringent academic requirements of Prop. 16 and amended the sliding scale initial eligibility index to be less restrictive and less discriminatory.” *Id.*

101. Bond, Schoeneck & King, PLLC, *supra* note 9, at 1.

In 2003, eligibility standards were adapted from three alternative proposals to amend the standards existing at the time.¹⁰² The NCAA purported to have two goals with its adjustments: “maximize academic success and minimize adverse impact on low-income and minority student-athletes.”¹⁰³ Among the first changes were the increase in the number of core courses from thirteen to fourteen and the complete elimination of the partial qualifier provision.¹⁰⁴ The biggest focus, test score cutoffs, was eliminated—an SAT score as low as 400, or a comparable ACT score, could still be enough to qualify if the student’s GPA was high enough.¹⁰⁵ In 2008, the Division I core course requirement was increased once again from fourteen to sixteen.¹⁰⁶

As the NCAA always seems to remain dormant for so long, and with *Pryor II* over a decade behind, the organization began working on its next policy change that would take effect in 2016. Though not yet implemented, the newest policy, 2.3 or Take a Knee, is arguably the most academically intensive change the organization has ever created. And based on inferences from existing data and NCAA history, it will once again be hard to deny the disproportionately high and purposely adverse effects the new policy will have on African-American student-athletes. Though the focus in this policy has shifted from test scores to GPA, this increase, especially because it focuses on core courses, will likely result in the most widespread shift in the racial makeup of the revenue sports in decades. And if the revenue sports, especially basketball, which has a dominant African-American presence, undergo substantial whitewashing, the NCAA will be hard-pressed to escape the impending backlash and evidence that will support its continuation of institutionally racist practices. Though the upcoming changes were introduced in 2012, giving all students their full high school careers to prepare, data supports the conclusion that prospective African-American college freshmen athletes will still suffer the most.

102. *See id.* at 6–8.

103. Todd A. Petr & John J. McArdle, *Academic Research and Reform: A History of the Empirical Basis for NCAA Academic Policy*, 5 J. INTERCOLLEGIATE SPORT 27, 33–34 (2012).

104. *See* Bond, Schoeneck & King, PLLC, *supra* note 9, at 1.

105. *Id.*

106. NCAA ELIGIBILITY CTR., NCAA FRESHMAN-ELIGIBILITY STANDARDS: QUICK REFERENCE SHEET 1 (May 7, 2008), http://www.itatennis.com/Assets/ita_assets/pdf/Junior+Players/NCAA_Eligibility_Center_Reference_Sheet.pdf.

IV. WHAT'S COMING AND WHAT NEEDS TO BE DONE

A. *A Bleak Future for Black Male Revenue-Sport Student-Athletes*

What does this mean for the group of student-athletes that will enter Division I institutions in the fall of 2016? Though the NCAA has claimed to work tirelessly over the years to undercut the racial undertones of its academic policies, what is likely to occur this fall is out of the NCAA's hands. The new academic standard should statistically affect more incoming African-American males than any other population. By raising the minimum immediate-competition GPA to 2.3, almost half of African-American male student-athletes will struggle with eligibility. The National Center for Education Statistics (NCES) tracked twenty years of academic progress by gender and race/ethnicity in its report, "The Nation's Report Card."¹⁰⁷ The document covers the time period from 1990 to 2009, breaking down data by cumulative GPA and core course GPA.¹⁰⁸ The NCAA is requiring a 2.3 cumulative GPA for core courses. As an average, this assumes that about half of the population of interest would have a GPA below the mean. The 2.38 already straddles the line of eligibility, leading to the conclusion that African-Americans are at a higher risk of being deemed ineligible and disproportionately so. When the focus is placed on the two revenue-producing sports, it becomes much clearer that the new policy would disqualify black male football and basketball players at a much larger percentage than any other racial group.

According to the NCAA's research, 43.1% of men's basketball players and 35% of football players that enrolled as freshman in the fall of 2009 would have been ineligible to play if the new standards were in place.¹⁰⁹ Academically, not much has changed, as 2015 predictions state that 40% of the basketball players and 35% of the football players currently in high school are not going to be eligible under the new rules.¹¹⁰ Scholars researching this area have been careful to not implicate race, generalizing it by the entire sport. But

107. See generally NAT'L CTR. FOR EDUC. STATS., U.S. DEP'T EDUC., THE NATION'S REPORT CARD: AMERICA'S HIGH SCHOOL GRADUATES 22-42 (2009), <http://nces.ed.gov/nationsreportcard/pdf/studies/2011462.pdf>.

108. See *id.* (categorizing by race/ethnicity, gender, and course variations, including core academic GPA, total cumulative GPA, and average GPA by course type).

109. Dana O'Neil, *Eligibility vs. Academic Preparedness*, ESPN (Aug. 14, 2012), http://espn.go.com/college-sports/story/_/id/8236949/ncaa-increases-minimum-eligibility-standards-division-student-athletes.

110. See *NCAA Eligibility*, ABOVE THE RIM RECRUITING, INC., <http://abovetherimrecruiting.com/ncaa-eligibility-guidelines/> (last visited June 9, 2016) (providing the most accurate information available for predictions about the impact the new standards will have on the incoming 2016 class of college student-athletes).

it is already general knowledge that African-American males make up a large percentage of both sports (45.8% in football and 60.9% in basketball).¹¹¹ What is more difficult to find is the racial makeup of freshmen student-athletes. As a whole, this is not published; one would have to manually count the freshmen on each Division I roster. A smaller version of this approach was undertaken to further support the negative racial implications of this new policy. Arguably, the SEC is a powerhouse conference for football, housing fourteen institutions, while the Atlantic Coast Conference (ACC) is massively popular for basketball and made up of fifteen institutions. Focusing first on football and the SEC, a review of current rosters reveals that of the 416 freshmen, 271 of them are African-American, a staggering 65%. Additionally, many of these freshmen were eligible to play immediately, and did, as the popularity of the redshirt is declining in the SEC.¹¹² Half of the SEC teams redshirted less than ten of their freshmen during the 2013–2014 season, and these institutions have over twenty freshmen on their rosters.¹¹³ Experts believe more true freshmen are seeing playing time because of increases in scholarship limitations, players departing early for the NFL draft, and young talent.¹¹⁴ In 2013, less than half of the available freshmen redshirted, leaving 196 of the 348 eligible for play. Statistical analysis infers that the majority of the available pool were African-American. That could change dramatically.

If the NCAA's 2009 numbers hold steady, 35.2% of incoming football players will be academically ineligible to participate.¹¹⁵ Using the 2015 SEC football rosters as an example, 146 of the 416 freshmen would be unable to participate. As previously stated 65% of the 416 freshmen are African-American. Considered another way, for every twenty players, thirteen are African-American. Following this data, 95 of the 146 ineligible student-athletes are African-American student-athletes. This is further supported by the previous inference about African-American male GPAs. Football student-athletes already underperform their non-athlete peers, pushing African-Americans further down the eligibility list when you factor in their GPAs. What was once the vast majority of the incoming football

111. Bimper, *supra* note 20.

112. See Chase Goodbread, *Redshirting in College Football Trending Downward*, NFL (Aug. 25, 2014), <http://www.nfl.com/news/story/0ap3000000383458/article/redshirting-in-college-football-trending-downward>.

113. Mike Herndon, *Redshirting Diminishes as More Players Leave Early for NFL and Young Talents Want to Play*, AL (Aug. 24, 2014), http://www.al.com/sports/index.ssf/2014/08/redshirting_diminishes_as_more.html.

114. *See id.*

115. O'Neil, *supra* note 109.

population will drop to the minority because of a GPA increase that blatantly affects one group more than any other. The implied institutional racism is further supported by the effects the new policy will have on basketball in the ACC, which, similar to football, has 65% African-American freshmen representation at thirty-nine. Redshirting is rarely employed in college basketball; athletes come prepared to immediately contribute to the team. However, according to the NCAA, 43.1% of incoming student-athletes will have to delay their debuts. If this was applied to the class that matriculated most recently, twenty-six of the sixty freshmen would be disqualified from competition. Simple statistical analysis predicts that seventeen of those twenty-six freshmen would likely be African-American. Once again the population would see a shift. GPA restrictions favor the recruitment of white student-athletes to fill the void because it will be easier to find white athletes who will immediately qualify based on the predicted GPA data.

Despite using only the data of two conferences, the implications are obvious: the new NCAA policy will disproportionately deplete the African-American presence in the college sports they currently dominate, which have been producing the most revenue. In the words of Sonny Vaccaro, “Ninety percent of the NCAA revenue is produced by 1 percent of the athletes. Go to the skill positions—the stars. Ninety percent (of the 1 percent) are [b]lack.”¹¹⁶ Of the prospective student-athletes who face the reality that they will not meet NCAA requirements, the majority will be black. In trying to fulfill the NCAA’s new requirement, coaches will have a much easier time finding white males that meet the grade requirement, relegating African-Americans to a minority presence. It begs the question of whether this has been the plan for some time: let African-American athletes build the sport to a point where it could transcend their efforts, then gradually push them out. The NCAA is not new to charges of institutional racism, and with this policy, it will likely have to justify its actions, especially when the numbers support discriminatory changes.

B. WHAT Can the NCAA Do to Attempt Redemption (Again)?

The NCAA cannot deny the effects the new policy will have on African-American male athletes. Though the organization makes its academic data available publicly, researchers at the University of Pennsylvania support publishing data that delineates the information similar to the framework above.¹¹⁷ Separating athletic academic data by race, sex, sport, and division will

116. Everett L. Glenn, *The Shame of College Sports: Black Athletes Play. But Where’s the Payoff?*, SACRAMENTO OBSERVER (Mar. 11, 2013), <http://sacobserver.com/2013/03/the-shame-of-college-sports/>.

117. See SHAUN R. HARPER ET AL., BLACK MALE STUDENT-ATHLETES AND RACIAL INEQUITIES

allow the NCAA to justify any claims it makes about the academic progress of the population that generates most of its annual revenue.¹¹⁸ These same researchers suggest a number of additional improvements, such as establishing “a commission on racial equity that routinely calls for and responds to” the data, disallowing the NCAA to persist in any behavior that can qualify as fostering racial inequality.¹¹⁹ Additionally, athletic programs in the five conferences that generate the most revenue should use some of their revenues to establish programming and interventions to improve racial equity.¹²⁰ Finally, the researchers call for more accountability from the colleges and their administrations, faculty, and staff.¹²¹ The NCAA's academic policies tend to place all of the academic burdens on the population that is systematically at a disadvantage, partially due to the organization's own policies that discriminate against them. College leaders should want to see the categorized data for analysis and charge themselves with closing racial gaps observed in the reports.

V. CONCLUSIONS AND REFLECTIONS

In its recent history, the NCAA has continuously displayed some level of upheaval in establishing academic policies, particularly as they pertain to initial eligibility. In combating critics and holding steadfast to its mission of championing educational primacy, the organization has unfortunately ignored—or purposely neglected—the needs of its most significant participants, the black men on the basketball and football teams. These student-athletes have a dominant presence in each sport despite academic policies that work against their favor. Over the last three decades, it has become impossible to deny the institutional racist practices of the NCAA—arbitrary cutoff scores and academic requirements that run counter to the average academic achievement of black male athletes. Furthermore, much has been written about the not-so-coincidental alignment of more stringent academic standards with the influx of black college athletes. The NCAA is torn between its commercial interests and its policymakers, who are oblivious to their institutional racist policies. As the organization tries to toe the line, it typically ends up on the wrong side, shutting out a population that benefits greatly from the ability to use college athletics as a means to obtain access to

IN NCAA DIVISION I COLLEGE SPORTS 16 (2013), [https://www.gse.upenn.edu/equity/sites/gse.upenn.edu/equity/files/publications/Harper_Williams_and_Blackman_\(2013\).pdf](https://www.gse.upenn.edu/equity/sites/gse.upenn.edu/equity/files/publications/Harper_Williams_and_Blackman_(2013).pdf).

118. *Id.*

119. *Id.*

120. *Id.*

121. *Id.*

higher education.

Systematic disadvantages have stifled the academic progression of black male athletes with their average GPAs always trailing behind their white male counterparts; the same applies to their test scores. Though this information has always been readily available, the NCAA still established policies that would reduce the eligibility pool for this population. After being called out by coaches, standardized test makers, and finally, the athletes themselves, in court, the NCAA was indirectly acknowledging its history of racial inequity by removing test score barriers and focusing on other academic requirements. The sliding scale is not a perfect science either, as data shows that African-American athletes average lower GPAs. This would require higher test scores, which they lag in as well. However, the sliding scale and minimum-score removal did appear to be a step in the right direction. But as 2016 draws closer and frameworks are developed, it is hard to look at the racial shift that is likely to occur, at least for the first few years, in men's basketball and football, and not apply the term "institutional racism." No other population will be affected the same way. And if the NCAA learned anything from the *Pryor II* case, it is that it cannot purport to not know the potential positives of the policy and it cannot justify its negative effects. The incoming freshmen with immediate eligibility will be overwhelmingly white, and while the young black men try to fulfill the requirements to earn athletic competition time, the country will have time to adjust to basketball and football without as many black faces. If this image holds, will African-American males ever be able to regain their dominance? It appeared that as soon as black male athletes began pouring in, the policymakers have been working towards slowly, but systematically, pushing them back out. The 2016 policy has the best chance in decades of accomplishing this on a large scale.

There is no guarantee that this will happen; however, history and current data suggest that it will. Furthermore, it will take a number of years to plateau—assuming it does or that another policy change is not implemented that further discriminates against African-American athletes. With such staggering evidence, the NCAA will be hard-pressed to convince anyone who takes issue with the racist implications of the policy that it was neither the NCAA's intention nor something it could not predict; the data speaks for itself. It is likely that the organization will be forced to amend the policy sooner than planned or face the ramifications, possibly legal, of its newest attempt of academic reform.