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ARTICLES

WHEN THE NUMBERS DON’T ADD UP: OVERSIGNING IN COLLEGE FOOTBALL

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I. INTRODUCTION

Congratulations. After months of receiving letters in the mail and answering telephone calls from college football coaches around the country, the recruiting process has finally ended because today is February 2, 2012, National Signing Day. Although you have been verbally committed to Hometown University for months now, today is the day that you (and your parents) will formally sign the National Letter of Intent (NLI), the document that will serve as your binding commitment to play football for Hometown University next fall. You spend the spring and summer months training in anticipation for your first season as a college football player, all the while dreaming about the future opportunities and experiences that enrolling at Hometown University will provide.

Fast-forward to your first day of practice. While putting on your pads in the locker room, you hear grumblings from the other freshmen that your recruiting class has been “oversigned” and there are not enough athletic scholarships available for all of the other incoming football student-athletes who also signed NLIs in February. With this rumor on your mind, you head out the door to the practice facility, only to be stopped by your position coach who informs you that the head coach wants to see you in his office. What comes next is a blur. The head coach begins talking about the large size of the recruiting class, a “numbers game,” and how you, unfortunately, are the odd man out. Meaning, Hometown University will not be able to offer you an

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athletic scholarship for the upcoming season. You are given the option either
to join the football team as a walk-on and pay your own tuition or to
immediately move out of your dorm room. You have just become the latest
victim of the epidemic that is spreading throughout college football:
oversigning.

The concept of oversigning is fairly simple. It occurs most commonly in
college football, when a National Collegiate Athletic Association (NCAA)
Division I school accepts more signed NLIs than it has room for on its NCAA-
mandated, eighty-five person scholarship limit.\(^2\) Although examples of
oversigning in college football have been around as early as 1941,\(^3\) it seems to
have become more commonplace in the past decade, coinciding with the
purported “arms race” in college athletics and the increase in head coaches’
salaries.\(^4\) However, just because the practice of oversigning has become the
norm in college football does not mean that student-athletes who have been
made casualties of the oversigning phenomenon do not have any legal
recourse. This paper will discuss the fundamental principles of contract law
that may provide a legal remedy for student-athletes who have been the target
of oversigning.

Part II will provide a brief history of the NLI and why it was created. Part
III will give an overview of the basic principles of the NLI. Part IV will
discuss “oversigning” as a term of art and provide a hypothesis for why it has
become a popular recruiting practice in college football. Part V will illustrate
a recent example of oversigning. Part VI will discuss the elements needed to
create a valid contract, how these elements relate to the NLI, and the remedies
that can be sought if a party does not fulfill a contractual obligation. Part VII
will evaluate the relevant case law that will form the basis of a lawsuit that can
be brought by a student-athlete who has been oversigned. Part VIII will
discuss the possible legal claim oversigned student-athletes may have against
an oversigning school. Part IX will provide an analysis of the damages that a
court may award an oversigned student-athlete if he or she is successful on his
or her legal claim. Part X will evaluate the barriers that may restrict an
oversigned student-athlete from bringing a claim against the oversigning
school. Part XI will make a prediction to where the issue of oversigning may
be headed. Finally, part XII will conclude with an overview of legal and

\(^2\) See Definitions, OVERSIGNING.COM, http://oversigning.com/testing/index.php/definitions/ (last

\(^3\) See William Bradford Huie, How To Keep Football Stars in College, COLLIER’S WKLY. MAG.

\(^4\) See Gregg Doyel, Bad Guys Utilize Over-Signing, and It Has to Stop, CBSSPORTS.COM (AUG.
8, 2010), http://www.cbssports.com/collegefootball/story/13727507/bad-guys-utilize-oversigning-
and-it-has-to-stop.
nonlegal actions that can be taken to prevent oversigning and to remedy oversigning if it occurs.

II. BRIEF HISTORY OF THE NLI

Each year, more than 36,000 prospective student-athletes sign NLIs to attend NCAA Division I and Division II schools. However, the NLI was not always the common household acronym that it has become today in the college sports environment. Interestingly, the NLI program was not created by the NCAA. Instead, it was created in 1964 by a group of seven conferences and eight institutions that had the intention of creating a program “to curb recruiting excesses that began when college sports became a national endeavor with the increased television exposure of the late 1940s and early 1950s.” The group also wanted to end the practice of coaches luring student-athletes away from schools they already had enrolled in. In its infancy, the program was successful between the seven conferences that created it, but the program’s overall success was mitigated because conferences and schools nationwide were not participating in the program.

Today, over 600 NCAA Division I and Division II schools participate in the NLI program, with the program being governed by the Collegiate Commissioners Association and administered by the NCAA Eligibility Center. The NLI program is voluntary, meaning no student-athletes or schools are required to enroll in the program in order to compete at either the NCAA Division I or Division II level. Still, because of the advantages that the NLI program provides, it continues to be an integral part of the recruiting process. The NCAA recognizes three key advantages for the student-athletes and schools that participate in the NLI program: (1) “Once a National Letter of Intent is signed, prospective student-athletes are no longer subject to further recruiting contacts,” (2) “Student-athletes are assured of an athletics scholarship for a minimum of one full academic year,” and (3) “By emphasizing a commitment to an educational institution, not particular

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6. *Id.*
7. *Id.*
8. *Id.*
9. *Id.*
10. *Id.*
12. *Id.*
coaches or teams, the program focuses on a prospective student-athlete’s educational objectives.”13 The language included in each NLI creates these advantages and also serves as the foundation for the basic principles of the NLI program.

III. NLI BASICS

At the most basic level, signing an NLI means that a student-athlete commits to attending a particular school for one academic year.14 In return, the school agrees to provide the student-athlete with financial aid for that academic year as long as the student-athlete is admitted to the school and is found to be eligible under NCAA bylaws.15 If a student-athlete signs an NLI and then does not gain admittance into the school, or fails to meet the NCAA’s initial-eligibility requirements, the NLI becomes null and void.16 Additionally, if any amendments or alterations are made to the NLI, it will be declared null and void.17 Furthermore, the language of the NLI provides a “Coaching Changes” clause that states, “I understand I have signed this NLI with the institution and not for a particular sport or coach. If a coach leaves the institution or the sports program . . . , I remain bound by the provisions of this NLI.”18 However, if a student-athlete no longer wishes to enroll at the school he or she signed the NLI with, there is a process by which he or she may be released from the NLI.19 If the student-athlete is released from the signed NLI, he or she generally loses one season of competition in all sports, meaning he or she cannot immediately begin to play for the next school he or she intends to enroll at.20 Although law school students and athletic department officials alike have critiqued the NLI and provided suggestions for its improvement,21 the most recent critique of the NLI has been largely related to the role it plays in oversigning, a term that has not been formally defined but has become popular due to its use in the mainstream media’s coverage of college athletics.

13. Id.
14. Id.
15. Id.
16. Hosick, supra note 5; NLI, supra note 1, at 2.
17. See Hosick, supra note 5.
18. NLI, supra note 1, at 2; see Hosick, supra note 5.
19. Hosick, supra note 5; NLI, supra note 1, at 1–2.
20. Hosick, supra note 5.
IV. OVERSIGNING AS A TERM OF ART

The term oversigning is not defined in, nor does the word even appear in, the NCAA Division I Manual. However, Bylaw 15.5.1.10.1 of the NCAA Division I Manual states that at schools that participate in the Football Bowl Subdivision (FBS) “there shall be an annual limit of 28 on the number of prospective student-athletes who may sign a National Letter of Intent or an institutional offer of financial aid from the initial signing date of the regular signing period of the National Letter of Intent through May 31.”

Oversigning is the term that the media and critics have coined to define the situation in college football when a school accepts more signed NLIs than it has student-athletes who are leaving the team before the next season due to graduation, early entry for the NFL Draft, medical reasons, or ineligibility (e.g., academically ineligible, NCAA violations, etc.). Although multiple theories have been given for why oversigning occurs, there seems to be one underlying reason among each theory: coaches sign more student-athletes in order to have a chance to erase their mistakes in past recruiting classes and to have a back-up plan in a current recruiting class. For example, if a coach recruits a student-athlete and after two years on campus the student-athlete does not live up to the coach’s performance expectations, the coach may oversign his current recruiting class and subsequently either: (a) create a reason for not renewing the underperforming student-athlete’s one-year renewable athletic scholarship, although the reason for not renewing the scholarship cannot be “[o]n the basis of a student-athlete’s athletics ability, performance or contribution to a team’s success,” or (b) suggest that the underperforming student-athlete transfer to another school.

Coaches also use oversigning to safeguard against scenarios when prospective student-athletes who have signed an NLI are ineligible under NCAA bylaws to enroll at the school or do not gain admittance into the school, thus forcing the coaches to find other prospective student-athletes to use the scholarships. The two most common forms of ineligibility are (1) student-athletes not meeting NCAA academic standards, and (2) student-athletes losing their amateur status through other restricted activity. In either situation, the NLI becomes null and void. Because an NCAA ruling rendering a student-athlete ineligible generally happens so close to the

22. 2011–12 NCAA DIVISION I MANUAL, art. 15, § 15.5.1.10.1 (Aug. 1, 2011) [hereinafter NCAA MANUAL].
24. NCAA MANUAL, supra note 22, art. 15, § 15.3.4.3(a).
25. NLI, supra note 1, at 2.
beginning of the season, and a majority of the highly sought after recruits have already signed NLIs with other schools, the coach is forced to either save the scholarship and use it the following season, award the scholarship to a student-athlete on the team who is currently not on scholarship, or find a last-minute replacement for the scholarship. Instead of using any of the aforementioned options, some schools and coaches instead oversign a recruiting class and rationalize the oversigning practice by arguing that if any of the student-athletes in the recruiting class are not eligible to participate in NCAA athletics, the coach already has other “back-up” student-athletes who have signed NLIs to fill out the noneligible student-athlete’s spot in the recruiting class.26

Unfortunately, many times coaches do not tell which student-athletes are the designated “back-ups” because it would likely lead to the student-athlete choosing to sign an NLI with another school where he or she is not a second choice. Coaches who practice oversigning are taking a gamble that enough of his or her recruited student-athletes will not become eligible and that the number of student-athletes that signed NLIs will match the number of scholarships available for the team. Sometimes this gamble works, other times it leads to substantial hardship for a student-athlete who has been oversigned.

V. AN EXAMPLE OF OVERSIGNING

As stated earlier, it seems that oversigning has always played some role in college sports, specifically football. However, the recent upswing in oversigning has led to a greater critique of the practice. For example, in February 2010, a website was formed, Oversigning.com, to chronicle all issues, news, and statistics related to oversigning.27 Although coverage of oversigning in the media after National Signing Day is popular because writers have access to the hard data when schools announce their recruiting classes, there are few stories related to the adverse effects oversigning has on student-athletes who lose their spot on the team.28 The dearth of these stories can be attributed to: (1) student-athletes not wanting to jeopardize a spot on other teams after being released from their original NLI with a school; (2) student-athletes not having time to speak with the media because they are busy trying to reevaluate and reorganize their college future; and (3) oversigning has become so common place that student-athletes know it is the ugly side of

recruiting and are only slightly fazed when it occurs. Still, some oversigning cases have garnered more media attention than others and have become the poster child for advocates against oversigning and for punishing the coaches and schools that use the practice.

Elliott Porter is an offensive lineman from Waggaman, Louisiana, and on February 2, 2010, he signed an NLI to attend Louisiana State University (LSU).\(^29\) Porter arrived on LSU’s campus in June 2010, moved into his dorm room, enrolled in summer classes, and began lifting weights with his teammates.\(^30\) But in early August, according to media reports, Porter was summoned from his dorm room to his head football coach’s office.\(^31\) Six months after signing his NLI, and over a year since he had given his verbal commitment to attend LSU, Porter was reportedly told that there was not enough room for him on the team.\(^32\) In an interview, Porter informed a reporter that he was given the option to “grayshirt,” meaning he could remain on the team but he would have to pay his tuition and not be on athletic scholarship.\(^33\) Instead, he moved out of his dorm room and moved back home in an attempt to plan his next move.\(^34\) Porter eventually was released from his NLI with LSU and enrolled at the University of Kentucky for the Fall 2010 season, where he redshirted and did not play a single down.\(^35\) On January 19, 2011, Porter confirmed to the media that he would once again enroll at LSU for the 2011 season as a walk-on for LSU’s football team.\(^36\) However, Porter is required to be a walk-on for two years before he can finally be eligible to get the athletic scholarship he was promised when he was a high school senior.\(^37\)

Although Porter’s situation eventually had a positive outcome because he is currently enrolled at LSU, it can be argued that his being oversigned still created substantial hardship for him. First, he was forced to alter his post-high school plans, which were the result of over a year’s worth of planning.

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30. Doyel, supra note 4; Hinton, supra note 29; Staples, supra note 23.
31. Hinton, supra note 29.
32. Id.
33. Id.
34. Id.
36. Id.
37. Id.
Second, instead of being guaranteed one year where LSU would provide him with an athletic scholarship, Porter will be forced to pay his own way to attend LSU for at least two years. Third, and probably most important, Porter lost the one thing that cannot be recovered or replaced: time. Although Porter was able to redshirt while at the University of Kentucky, and thus will still be eligible to play football for four seasons at LSU, it probably would have been more beneficial for Porter if he was able to redshirt at LSU instead. If he had been able to redshirt at LSU, he would have been able to get accustomed to the rigors of being a student-athlete in the environment where he would likely be spending the rest of his college career. Similarly, Porter would have been able to form relationships with his current classmates, teammates, coaches, and other members of the LSU campus community. If Porter could not have found an alternative plan after he had been notified he was oversigned, he may have had a valid breach of contract claim due to the NLI and financial aid agreement that he entered into with LSU.

VI. CONTRACT LAW PRINCIPLES AND HOW THEY APPLY TO THE NLI AND OVERSIGNING

The Restatement (Second) of Contracts defines a contract as “a promise or a set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty,”38 and states that “the formation of a contract requires a bargain in which there is a manifestation of mutual assent to the exchange and a consideration.”39 Therefore, there are three essential elements that must be present for a valid contract to exist: (1) an offer, (2) consideration, and (3) acceptance of the offer. If the NLI process is followed correctly, these three elements will be fulfilled and a signed NLI, with an accompanying signed financial aid agreement, will create a contractual obligation between the student-athlete and the school.40

The offer element that makes up the contractual relationship is fulfilled when the school provides an NLI and a financial aid agreement to the student-athlete.41 The financial aid agreement serves as the first part of the

39. Id. § 17(1).
41. See Cozzillio, supra note 40, at 1311–16.
consideration because it acts as a legal detriment to the school and induces the student-athlete to accept the offer of attendance at the school. The second part of the consideration is the student-athlete’s agreement to attend the school, because the student-athlete is under no other obligation to attend the school, and his or her signing of the NLI prevents the student-athlete from attending another school. Acceptance occurs when the student-athlete and his or her parent or legal guardian signs the NLI and financial aid agreement and returns them to the school.

A properly executed NLI creates a bilateral contract between the student-athlete and the school because the school promises to provide the student-athlete with financial aid for one academic year in the form of an athletic scholarship, and the student-athlete promises to attend the school for one academic year and participate on the school’s athletic team. The student-athlete also promises “to comply with the rules and regulations of [his or her] particular institution, athletic conference, and the athletic association [NCAA]” and will only continue to receive the financial aid if he or she remains eligible to play in the school’s athletic program under those rules and regulations. The promises made by the school to the student-athlete and by the student-athlete to the school serve as the contractual obligations that each party has to each other. If these contractual obligations are not met by either party, the offended party could file a breach of contract claim and seek legal remedies.

Because the signing of the NLI and financial aid agreement by the student-athlete and the school creates a contractual relationship between the two parties, and considering the way that courts have treated similar lawsuits brought by student-athletes against a school, the best legal claim that an oversigned student-athlete has against a school must be rooted in contract law.

VII. RELEVANT CASE LAW

To gain a better understanding of the possible legal claims that student-athletes who have been the victims of oversigning may bring against a school, it is first important to know how the courts have treated similar legal claims by other student-athletes. In general, courts have found that the financial aid

42. Meyer, supra note 21, at 229–30. Meyer’s article does a great job of summarizing the contractual nature of the NLI.
43. Id. at 230.
44. See Cozzillio, supra note 40, at 1316–20.
46. MITTEN ET AL., supra note 45, at 112; see Cozzillio, supra note 40, at 1287–1310.
agreement accompanying an NLI entered into by a student-athlete and a school constitutes a valid contract. 47 However, in Jackson v. Drake University, the court also noted that it would not read any implicit rights into the NLI or financial aid agreement between the student-athlete and the school because “where the . . . contract is clear and unambiguous, the language [of the contract] controls.” 48 Therefore, if the financial aid agreement does not list a right for the student-athlete to play a specific sport for the school, a court will not create that right for the student-athlete. 49 The text of the NLI also does not create the right for the student-athlete to play a specific sport. 50 Similarly related to implicit rights in financial aid agreements and the NLI, in Fortay v. University of Miami, a student-athlete brought a breach of contract claim against his school and coach for allegedly not fulfilling the oral promises that the coach made to the student-athlete during the recruiting process. 51 Although the case settled before going to trial and the breach of contract claim was not ruled on by the court, some critics have argued that similarly situated student-athletes may have valid breach of contract claims in regard to the oral promises made for recruiting purposes if the promises are not kept. 52

On the other hand, courts generally will enforce all of the express provisions included in the financial aid agreement. For example, many financial aid agreements state that a student-athlete will receive financial aid in the form of an athletic scholarship as long as the student-athlete becomes academically eligible to enroll in the school, remains academically eligible, abides by all school and team rules, and remains eligible under conference and NCAA rules. 53 But, if the student-athlete does not follow these rules or becomes ineligible, a school may have the right to terminate the financial aid agreement with the student-athlete. 54 However, a court has found that student-athletes who have signed financial aid agreements with a school have

49. See id.; Hysaw, 690 F. Supp. at 944.
50. See NLI, supra note 1, at 2.
52. See generally James Kennedy Ornstein, Comment, Broken Promises and Broken Dreams: Should We Hold College Athletic Programs Accountable for Breaching Representations Made in Recruiting Student-Athletes?, 6 SETON HALL J. SPORT L. 641 (1996).
53. See Taylor, 191 S.E.2d at 382; Williams, 752 N.E.2d at 374–76.
54. See Taylor, 191 S.E.2d at 382; Williams, 752 N.E.2d at 374–76.
property rights in receiving the scholarship funds from the school as long as they fulfill the aforementioned contractual obligations.\(^{55}\) Considering the way in which previous courts have treated the contractual obligations of student-athletes and schools resulting from the NLI and accompanying financial aid agreement, an oversigned student-athlete probably has a valid breach of contract claim against the school that oversigned him or her.

VIII. A Legal Claim for Oversigned Student-Athletes

To be awarded a legal remedy after oversigning occurs, a student-athlete should file a breach of contract claim against the school. A breach of contract claim against the school will only be successful if a court first finds that there is a valid contract between the student-athlete and the school. As discussed earlier in Part VII, courts have generally found that a contractual relationship is created between the student-athlete and the school during the NLI process because both parties sign the financial aid agreement that accompanies the NLI.\(^{56}\) However, if a court is not satisfied with the persuasive authority of similar cases involving breach of contract claims by a student-athlete against a school in other jurisdictions, a student-athlete should also be ready to prove the existence of the three essential elements for a valid contract: (1) an offer, (2) consideration, and (3) acceptance of the offer. If the parties followed the NLI process correctly, a student-athlete should have no problem showing a valid contract was created. The offer occurs when the school provides an NLI and an accompanying financial aid agreement to the student-athlete.\(^{57}\) The financial aid agreement serves as the first part of the consideration because it acts as a legal detriment to the school and induces the student-athlete to accept the offer of participating in athletics at the school.\(^{58}\) The second part of the consideration is the student-athlete’s agreement to attend the school, because the student-athlete is under no other obligation to attend the school and his or her signing the NLI prevents the student-athlete from attending another school.\(^{59}\) Acceptance occurs when the student-athlete and his or her parent or legal guardian sign the NLI and financial aid agreement and return them to the school.\(^{60}\)

After proving that a valid contract exists between the student-athlete and

\(^{55}\) Hyasaw, 690 F. Supp. at 944.

\(^{56}\) See generally Ross, 957 F.2d at 415–17; Jackson, 788 F. Supp. 1490; Hyasaw, 690 F. Supp. 940; Taylor, 191 S.E.2d 379; Williams, 752 N.E.2d 367.

\(^{57}\) Cozzillio, supra note 40, at 1311–16.

\(^{58}\) Meyer, supra note 21, at 229–30.

\(^{59}\) Id. at 230.

\(^{60}\) See Cozzillio, supra note 40, at 1316–20.
the school, the student-athlete “must point to an identifiable contractual promise that the [school] failed to honor.”\(^{61}\) The signed financial aid agreement that accompanies the signed NLI creates a right for the student-athlete to receive an athletic scholarship from the school for one academic year, even if the coach wishes to withdraw it.\(^{62}\) By oversigning a recruiting class and subsequently refusing to provide an oversigned student-athlete with his or her financial aid in a given academic year, a court will probably find that the school breached its contractual duty to the student-athlete. However, a court will only find that the school breached its contractual obligation if the school cannot prove that the student-athlete did not breach any of his or her obligations contained in the financial aid agreement.\(^{63}\) These obligations generally require that the student-athlete become academically eligible to enroll in the school, abide by all school and team rules, remain eligible under conference and NCAA rules, and remain academically eligible while enrolled at the school.\(^{64}\) If the school can prove that the student-athlete did not fulfill the aforementioned obligations, it may have a defense against a breach of contract claim brought by the oversigned student-athlete.\(^{65}\) If not, an oversigned student-athlete likely has a successful breach of contract claim and may receive a court-enforced remedy against the school.

**IX. REMEDIES AWARDED TO OVERSIGNED STUDENT-ATHLETES**

If a court finds that an oversigned student-athlete has a successful breach of contract claim against the school, it will likely grant the student-athlete an award in the form of either specific performance or monetary damages, depending upon which award a court feels will better put the student-athlete in the position that he or she would have been in had the school fully performed its contractual obligations.\(^{66}\)

In determining what remedy is most appropriate in the case of a breach of contract claim as the result of oversigning, it is important to remember that courts will only impose specific performance as a remedy for the aggrieved party if monetary damages are an inadequate recovery.\(^{67}\) It is also important to remember how the student-athlete was damaged by being the victim of oversigning. Most financial aid agreements between student-athletes and

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61. Ross, 957 F.2d at 417.
62. NLI, supra note 1, at 1; Hysaw, 690 F. Supp. at 944.
63. See Taylor, 191 S.E.2d at 382; Williams, 752 N.E.2d at 374–76.
64. See Taylor, 191 S.E.2d at 382; Williams, 752 N.E.2d at 374–76.
65. Taylor, 191 S.E.2d at 382; Williams, 752 N.E.2d at 374–76.
67. Id. at 198.
schools do not create a right for the student-athlete to play a specific sport for the school.\textsuperscript{68} If this right is not included in the financial aid agreement, a court will not create that right for the student-athlete.\textsuperscript{69} Furthermore, the text of the NLI also does not create the right for the student-athlete to play a specific sport.\textsuperscript{70} Therefore, if specific performance is awarded as a remedy in an oversigning breach of contract case, a school would not be directly forced to allow the student-athlete to participate on the school’s athletic team that he or she signed an NLI for because that provision is not included within the financial aid agreement or NLI. Instead, the school would probably be ordered to fulfill its contractual obligation of providing financial aid to the student-athlete for one academic year.

Interestingly, however, in order to allow a student-athlete to fulfill his or her contractual obligations under the financial aid agreement, namely the obligation to abide by all team rules, which would likely include attendance at all team events including meetings, practice, training, etc., the school may be indirectly forced to allow the student-athlete the opportunity to participate on the team. If the student-athlete does not fulfill his or her contractual duties under the financial aid agreement after specific performance is awarded, the school would have the opportunity to terminate the financial aid agreement and discontinue the financial aid that was awarded to the student-athlete by the court.\textsuperscript{71} But, the school could not terminate the financial aid agreement after specific performance was awarded to the student-athlete if the student-athlete was not given the opportunity to fulfill his or her contractual obligations in the first place. Therefore, if specific performance is awarded, a situation could arise where the school is essentially forced to allow the student-athlete to participate on the team, even though the right to participate on the team is not generally included in the financial aid agreement that accompanies the NLI. But because specific performance is a remedy left to a court’s discretion, a court could reason that the aforementioned situation “would cause unreasonable hardship”\textsuperscript{72} or be “contrary to public policy”\textsuperscript{73} and refuse to award specific performance.

Awarding specific performance that grants the oversigned student-athlete financial aid for one school year would not directly cause unreasonable hardship or loss to the school because the school would merely be fulfilling its

\textsuperscript{68} Jackson, 778 F. Supp. at 1493; Hysaw, 690 F. Supp. at 944.
\textsuperscript{69} Jackson, 778 F. Supp. at 1493; Hysaw, 690 F. Supp. at 944.
\textsuperscript{70} See generally NLI, supra note 1.
\textsuperscript{71} Taylor, 191 S.E.2d at 382; Williams, 752 N.E.2d at 374–76.
\textsuperscript{72} Restatement (Second) of Contracts §§ 357, 364(1)(b).
\textsuperscript{73} Restatement (Second) of Contracts § 365.
contractual obligation of providing financial aid to the oversigned student-athlete with funds that it presumably already had set aside for the student-athlete. However, it could indirectly lead to unreasonable hardship to a third party if the school is forced to retract financial aid from another student-athlete and give it to the oversigned student-athlete to comply with the NCAA’s eighty-five person scholarship limit on FBS teams. This would not be fair to that student-athlete and would undoubtedly cause him or her the same substantial hardship that the oversigned student-athlete suffered.

Although some may argue that any hardship to the school is justified due to its practice of oversigning, this situation could cause unreasonable hardship to the school as well because taking away a scholarship from another student-athlete without cause in order to accommodate the oversigned student-athlete could open the school up to another breach of contract claim from that student-athlete who did not have his scholarship renewed. Furthermore, if the school awards the oversigned student-athlete his or her financial aid and does not take away an athletic scholarship from another student-athlete, the school would probably be in violation of the NCAA scholarship limit. But, when a court is making a determination whether or not to award specific performance, it will not likely look to see if it would be forcing the school to violate an NCAA rule or factor in the future repercussions it could cause to other student-athletes or to the school. Due to the lack of any unreasonable hardship or public policy concerns, specific performance is a viable option for courts to award student-athletes who have succeeded on a breach of contract claim against a school as a result of oversigning. But if a court is not comfortable with awarding specific performance, it could award monetary damages instead.

If monetary damages are awarded to the oversigned student-athlete, the amount the school must pay will be measured by “(a) the loss in the value to [the student-athlete] of the other party’s performance caused by its failure or deficiency, plus (b) any other loss, including incidental or consequential loss, caused by the breach, less (c) any cost or other loss that [the student-athlete] has avoided by not having to perform.” Because the basic principle of a remedy in contract law is to “put the aggrieved party in the position that it would have been in if the defendant had fully performed,” a court would most likely award the total amount that was included in the financial aid agreement between the school and the student-athlete. In the case of a financial aid agreement for a football student-athlete, this amount is generally comprised of full tuition, fees, room, board, and books for one academic

74. See NCAA MANUAL, supra note 22, art. 15, § 15.5.6.1.
75. RESTATEMENT (SECOND) OF CONTRACTS § 347.
76. AYRES & SPEIDEL, supra note 66, at 198–99.
year. 77 Being that the other basic principle of a remedy in contract law is to “compensate the aggrieved party for losses suffered rather than to punish the contract breacher,” 78 it is unlikely that a court would award any punitive damages to the student-athlete.

Both specific performance and monetary damages are practical options for a court to award a student-athlete who brings a successful breach of contract claim against a school that has oversigned him or her. However, as it stands now, there are multiple barriers that are preventing student-athletes who have been oversigned from bringing breach of contract claims against the oversigning school.

X. THE PRACTICAL PROBLEMS OF BRINGING LEGAL CLAIMS AGAINST OVERSIGNING SCHOOLS

One of the most important deterrents stopping an oversigned student-athlete from bringing a breach of contract claim against a school is the effect that the suit would have on his or her future as a student-athlete. Because the litigation that would result from the student-athlete’s breach of contract claim could be a process that lasts at least several months and probably several years, the student-athlete would not likely have a court-ordered judgment until well after his or her current playing season has ended. This could be a daunting scenario for a student-athlete who has just graduated from high school and has been planning on immediately playing football at the college level.

This relates to the second most important deterrent for oversigned student-athletes to bring a lawsuit against his or her school. Many times when a student-athlete has been oversigned and told that there is no longer a spot for him or her on the team, the student-athlete will follow a path similar to that of Elliott Porter (the oversigned student-athlete at LSU) and find another school that will offer him or her an athletic scholarship to play on its football team. 79 If the student-athlete is able to find such an opportunity, it would make a breach of contract claim against the oversigning school impractical because in order to enroll at the new school, the student-athlete would have to first be released from the oversigning school, thus eliminating the contractual obligations between the parties.

Another deterrent is the fact that the most an oversigned student-athlete would probably be able to recover in a lawsuit is one year’s worth of financial

77. MITTEN ET AL., supra note 45, at 111.
78. AYRES & SPEIDEL, supra note 66, at 199.
79. See Kleinpeter, supra note 35.
aid. After that one year is over, a school would probably create a reason to not renew the student-athlete’s financial aid, forcing the student-athlete to either stay at the school and pay for it himself or herself or transfer to another school. Similarly, some student-athletes would not want to bring a suit against the school because if he or she was properly advised by his or her attorney, he or she would know that the most likely remedy would be one year’s worth of financial aid at the oversigning institution. After being oversigned, the student-athlete might not have as great of a desire to be a part of the institution as he or she once did during the recruiting process.

For the aforementioned reasons, the end of oversigning may rest on the shoulders of a student-athlete who either (1) cannot find another opportunity where he or she could earn an athletic scholarship and play college athletics or (2) is determined to attend and play college athletics for the school that has oversigned him or her. Until then, many schools will continue to use oversigning as a tool in recruiting student-athletes.

XI. THE FUTURE OF OVERSIGNING

Although the NCAA is taking positive steps to eliminate oversigning, there is currently no NCAA bylaw that effectively curbs its use in recruiting.80 However, some conferences have taken measures to prevent the use of oversigning by the schools in their conferences.

For instance, the Big Ten Conference abolished oversigning in 1956.81 In 2002, the Big Ten Conference modified the abolition of oversigning and created a rule that states in football “[a]n institution may have no more than 3 initial offers in excess of its institutional limit outstanding at any time.”82 This means that in football a Big Ten Conference school may oversign each recruiting class by three student-athletes, as long as they are under the eighty-five person scholarship limit for football by the beginning of the season.83

Because not all conferences have implemented similar regulations, schools in the Big Ten Conference are at a recruiting and competitive disadvantage in comparison to schools competing in other conferences. For this reason, the most effective way to end oversigning would be for the NCAA to create a bylaw that puts restrictions on oversigning, closes many of the loopholes that schools use to oversign recruiting classes, and imposes sanctions on the

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80. Infante, supra note 21; see Staples, supra note 23.
83. Rittenberg, supra note 81.
schools that violate that bylaw. If the NCAA does not create a bylaw that better prohibits oversigning, state legislatures may begin taking their own steps to prohibit it.

Recently, the Connecticut House of Representatives unanimously passed a bill being labeled as the “Truth in Recruiting” Act, which includes a provision that mandates an institution declare on its athletics website if it uses oversigning in recruiting.84 Still, this bill would only aid in the prevention of oversigning by schools in the state of Connecticut.

Unfortunately, oversigning will remain an integral part of the recruiting landscape for the foreseeable future until the NCAA creates a better bylaw preventing the practice, all state legislatures pass a bill similar to the one in Connecticut, or a high profile case is brought by an oversigned student-athlete and it results in long and costly litigation.

XII. CONCLUSION

Because so few student-athletes make their oversigning situations a public display or bring legal action against oversigning schools, some schools and head coaches will continue this recruiting practice. Therefore, student-athletes and their parents should be vigilant during the recruiting process to ensure that the student-athlete is not being put in a position where he or she may be oversigned. This vigilance in the recruiting process can be achieved by monitoring recruiting websites that document the number of scholarship offers a school has made and keeping an open line of communication between the student-athlete, the coach, and the school. Merely depending on what the coach or school is telling the student-athlete is not enough.

Currently, the best legal course of action for an oversigned student-athlete to take would be to file a breach of contract claim against the school. Although public policy concerns may caution a court to grant an award of specific performance to the prevailing student-athlete, it may still award monetary damages in an amount that would be equal to the financial aid amount the student-athlete would have received for one academic year had he or she not been oversigned.