

# SHOW US YOUR SUCCESS: A UNIVERSAL DESIGN APPROACH TO NCAA ELIGIBILITY

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## INTRODUCTION

“The beauty and joy found in sports, whether playing or watching, is something that benefits and unites everyone, regardless of religion, ethnic group, nationality, or disability.”  
– Pope Francis<sup>1</sup>

Prospective intercollegiate student-athletes must meet specific prerequisites before earning eligibility from the National Collegiate Athletic Association (NCAA). The NCAA prioritizes the academic nature of intercollegiate sports and requires that student-athletes meet initial academic eligibility standards.

A consistent theme researchers found in surveying student-athletes with learning disabilities<sup>2</sup> is that college athletes with these disorders “wanted to learn, felt like they could learn, and had developed strategies to assist them in being successful in the classroom.”<sup>3</sup> Yet, some prospective student-athletes with learning disabilities face barriers to the next chapter of their athletic careers because of the NCAA’s initial academic eligibility procedures.<sup>4</sup> The

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<sup>1</sup> *Pope Francis on Sports? The Pontiff Claims Sports Are ‘At the Service of Humanity,’* CATHOLIC ONLINE (Oct. 16, 2016), available at <http://www.catholic.org/news/hf/faith/story.php?id=71269>.

<sup>2</sup> This Article utilizes person-first language when referring to individuals with disabilities. For more, see Shannon Wooldridge, *Writing Respectfully: Person-First and Identity-First Language*, NATIONAL INSTITUTE OF HEALTH (Apr. 12, 2023), available at <https://www.nih.gov/about-nih/what-we-do/science-health-public-trust/perspectives/writing-respectfully-person-first-identity-first-language>.

<sup>3</sup> Sarah Stokowski, Heather Blunt-Vinti, Robin Hardin, Benjamin D. Goss & Megan Turk, *I Know I Can Learn: The Perceptions of NCAA Division I Football College Athletes with Learning Disabilities*, 2017 J. OF ISSUES IN INTERCOLLEGIATE ATHLETICS 95 (2017), available at [https://csri-jiia.org/wp-content/uploads/2017/07/JIIA\\_2017\\_SI\\_06.pdf](https://csri-jiia.org/wp-content/uploads/2017/07/JIIA_2017_SI_06.pdf)

<sup>4</sup> The NCAA does not publish disability demographics of its student-athletes. The National Association of Academic Advisors for Athletics estimates that 2.7% of student-

current model for initial eligibility carries with it the ghosts of the NCAA's agitated past concerning disability rights and a substantial risk of further stigmatizing individuals of diverse learning abilities.

To receive accommodations, student-athletes with learning disabilities fulfill a separate process to gain eligibility if they do not meet the NCAA's baseline standards. This process meets the statutory demands of the Americans with Disabilities Act.<sup>5</sup> That does not mean that the NCAA should maintain its current system. Disability scholars and advocates encourage institutions to create intrinsically inclusive systems and structures that all participants can use regardless of disability status.<sup>6</sup> The NCAA could alleviate these hardships for student-athletes with learning disabilities by heeding disability scholars and advocates who have developed broader accessibility guidelines than the ADA requires.

This Article argues that the NCAA should go beyond the minimum standards set out by the ADA in the NCAA's initial academic eligibility process. To do this, the NCAA should use universal design for learning principles.

This paper contends that separating students with learning disabilities from their peers in the eligibility process further stigmatizes people with disabilities and places a disparate hardship on prospective student-athletes with learning disabilities. Implementing a model with features of universal design would

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athletes have a learning disability, though researchers estimate that number is likely higher as student-athletes fail to disclose their disabilities because of stigma or have not been diagnosed. See Victoria Lajous, *Tips for Student-Athletes with Learning Disabilities*, COLLEGE EXPRESS (June 8, 2023), available at <https://www.collegexpress.com/articles-and-advice/athletics/blog/tips-student-athletes-learning-disabilities>.

<sup>5</sup> See e.g., *Ganden v. Nat'l Collegiate Athletic Ass'n*, No. 96 C 6953, 1996 WL 6800000, 1 (N.D. Ill. 1996) (holding that accepting remedial courses in place of "core" courses "fundamentally altered" the NCAA's eligibility rules and that the NCAA rules met ADA standards); *Tatum v. Nat'l Collegiate Athletic Ass'n*, 992 F. Supp. 1114, 1116 (E.D. Mo. 1998) (holding that accepting an untimed ACT "fundamentally altered" the NCAA's rules under the ADA); *Bowers v. Nat'l Collegiate Athletic Ass'n*, 9 F. Supp. 2d 460, 483 (D.N.J. 1998) (holding that the NCAA's waiver review process was a "reasonable accommodation" under the ADA).

<sup>6</sup> Jack Tillotson, Benjamin Laker, Vijay Pereira & Kushagra Bhatnager, *How to Make the Workplace More Inclusive for People with Invisible Disabilities*, HARVARD BUS. REV. (Mar. 19, 2020), available at <https://hbr.org/2023/04/how-to-make-workplaces-more-inclusive-for-people-with-invisible-disabilities>.

mitigate these struggles and place student-athletes with learning disabilities on a level of academic playing field.

Part I of this Article documents the NCAA's past of avoiding the responsibility to accommodate student-athletes with learning disabilities. Part II explains how the NCAA's current system hinders the association's goals and presents a new initial eligibility review model grounded in universal design principles. Finally, Part III explains how this approach will benefit student-athletes with learning disabilities and allow the NCAA to fulfill its commitment to diversity, equity, and inclusion.

## I. THE NCAA AND STUDENT-ATHLETES WITH LEARNING DISABILITIES

### *Learning Disabilities and Student-Athletes*

The term learning disability arose in the 1960s,<sup>7</sup> but professionals struggled for decades to adequately define what constitutes a learning disability.<sup>8</sup> Scholars characterize learning disabilities as a range of disorders that “have a neurological basis and are intrinsic to the individual” and encompass “a discrepancy between [academic] ability and achievement.”<sup>9</sup> Meanwhile, the federal government offers the following definition of learning disability:

Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.<sup>10</sup>

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<sup>7</sup> ACCOMMODATIONS IN HIGHER EDUCATION UNDER THE AMERICANS WITH DISABILITIES ACT (ADA) 131 (Michael Gordon & Shelby Kaiser, eds., 2000).

<sup>8</sup> MARILYN FRIEND, SPECIAL EDUCATION CONTEMPORARY PERSPECTIVES FOR SCHOOL PROFESSIONALS 166 (Virginia Lanigan ed., Pearson Education, Inc. 2005).

<sup>9</sup> Kimberly M. Brown, *Leveling the Playing Field: A Commentary on the Impact of High School Athletic Eligibility Requirements on Students with Learning Disabilities*, 4 DEPAUL J. SPORTS L. & CONTEMP. PROBS. 255 (2008) (quoting Marilyn Friend, *see id.*).

<sup>10</sup> 34 C.F.R. § 300.8(c)(10) (2018).

Students with learning disabilities struggle to focus, fulfill academic responsibilities, and perform certain cognitive tasks.<sup>11</sup> Specific learning disabilities include dyslexia (affecting reading), dyscalculia (affecting mathematics), dysgraphia (affecting writing), Attention Deficit Disorder (ADD), Attention Deficit Hyperactivity Disorder (ADHD), and Autism Spectrum Disorder.<sup>12</sup> While a student with a learning disability may do fine in one subject, another subject may pose a specific challenge to him or her because of the student's disability.

With adequate support, students with learning disabilities can succeed in the classroom.<sup>13</sup> Some accommodations burden the student more than others. For instance, separating K-12 with disabilities from their peers who do not have disabilities is impermissible when the school can facilitate blended learning environments.<sup>14</sup> Integrating students, regardless of disability status, is the best practice in all educational settings.<sup>15</sup>

### *The NCAA's History of Learning Disability Litigation*

Before the NCAA will grant eligibility, student-athletes must present sufficient academic credentials. Unless identified as a satisfactory "student," an individual may not be an "athlete" at the college level.

Courts extolled the NCAA's significant interest in preserving academic integrity in intercollegiate athletics.<sup>16</sup> As such, the NCAA enjoys substantial deference in creating academic eligibility standards for student-athletes. With rising concerns of academic

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<sup>11</sup> FRIEND, *supra* note 8, at 171-73.

<sup>12</sup> Yuri Nicholas Walker, *Playing the Game of Academic Integrity vs. Athletic Success: The Americans with Disabilities Act (ADA) and Intercollegiate Student-Athletes with Learning Disabilities*, 15 MARQ. SPORTS. L. REV. 601, 608 (2005), available at <http://scholarship.law.marquette.edu/sportslaw/vol15/iss2/8>.

<sup>13</sup> *Academic Accommodations for Students with Learning Disabilities*, UNIV. OF WASH. COLL. OF EDUC. (2012), available at [https://www.washington.edu/doit/sites/default/files/atoms/files/Academic\\_Accom\\_LD\\_04\\_12\\_12\\_0.pdf](https://www.washington.edu/doit/sites/default/files/atoms/files/Academic_Accom_LD_04_12_12_0.pdf).

<sup>14</sup> 34 C.F.R. § 300.114(a)(2) (2017).

<sup>15</sup> Hannah Grieco, *Students With Disabilities Deserve Inclusion. It's Also the Best Way to Teach*, EDUC. WEEKLY (May 7, 2019), available at <https://www.edweek.org/teaching-learning/opinion-students-with-disabilities-deserve-inclusion-its-also-the-best-way-to-teach/2019/05>.

<sup>16</sup> *Ganden v. Nat'l Collegiate Athletic Ass'n*, 1996 WL 6800000, 1, 15 (N.D. Ill. 1996).

fraud and recruiting scandals in the 1970s and 1980s,<sup>17</sup> the NCAA tightened its rules, leading to legal claims from student-athletes with learning disabilities. To understand the significance of learning disability inclusion within the NCAA, it is instructive to explore the association's past treatment of student-athletes with learning disabilities who sought eligibility.

### Constitutional Concerns: *Parish v. NCAA*

At its outset, the NCAA deferred to universities and colleges to admit student-athletes to their schools.<sup>18</sup> The NCAA shifted gears in 1964, adopting the "1.6 Predictor Rule," which outlined specific requirements for aspiring student-athletes based on the likelihood a student would retain a 1.6 grade point average (GPA) in college.<sup>19</sup>

As Congress passed the first significant piece of legislation addressing disability rights, the Rehabilitation Act of 1973,<sup>20</sup> the NCAA faced a judicial challenge regarding the "1.6 Predictor Rule": *Parish v. NCAA*.<sup>21</sup> Robert Parish failed to meet the standardized testing score requirement, although he maintained the organization's requisite 1.600 college GPA.<sup>22</sup> The NCAA suspended Parish because of his inadequate test score.<sup>23</sup> Parish filed a lawsuit alleging that the rule violated the Equal Protection Clause of the U.S. Constitution.<sup>24</sup>

The NCAA won its case since its eligibility requirements had a rational relationship to a legitimate purpose: "[E]nsuring that

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<sup>17</sup> Rodney K. Smith, *A Brief History of the National Collegiate Athletic Association's Role in Regulating Intercollegiate Athletics*, 11 MARQ. SPORTS. L. REV. 9 (2000), available at <http://scholarship.law.marquette.edu/sportslaw/vol11/iss1/5>.

<sup>18</sup> See Michael Modello and Amy M. Abernethy, *An Historical Overview of Student-Athlete Academic Eligibility and the Future Implications of Cureton v. NCAA*, 7 JEFFREY S. MOORAD SPORTS L.J. 127 (2000), available at <https://digitalcommons.law.villanova.edu/cgi/viewcontent.cgi?article=1189&context=mslj>.

<sup>19</sup> *Id.* at 128.

<sup>20</sup> See 29 U.S.C. § 794 (1973) (prohibiting institutions that receive federal funding from discriminating against individuals with disabilities). The disability rights movement was in its early stages as litigation concerning learning disabilities and NCAA academic eligibility standards first began.

<sup>21</sup> *Parish v. Nat'l Collegiate Athletic Ass'n*, 361 F.Supp. 1220 (W.D. La. 1973).

<sup>22</sup> *Id.* at 1221.

<sup>23</sup> *Id.* at 1220.

<sup>24</sup> U.S. Const. art. XIV, § 1

the athlete be an integral part of the student body and to maintain intercollegiate athletics as an integral part of the education program.”<sup>25</sup> With the *Parish* ruling, the court cemented that student-athletes had no constitutional basis to bring claims against the NCAA for disability discrimination.

The “1.600 Predictor Rule” did not survive long after *Parish*,<sup>26</sup> leaving a vacuum for academic eligibility standards.<sup>27</sup> A significant number of student-athletes floundered academically during this time.<sup>28</sup> To improve student-athlete graduation rates, the NCAA and university officials created new guidelines for eligibility under Proposition 48 in 1983.<sup>29</sup> The NCAA narrowed its requirements further in 1992 under Proposition 16.<sup>30</sup>

#### Adoption of the ADA: Ganden v. NCAA

With its new rules, the NCAA’s courtroom battles with disability causes of action reemerged. This time, new federal disability legislation tested the legitimacy of the NCAA’s initial academic eligibility requirements: the Americans with Disabilities Act,<sup>31</sup> enacted in 1990.

The tides risked turning for the NCAA’s eligibility procedures when Chad Ganden, one of the fastest swimmers in the United States at the time, caught the attention of recruiters at Michigan State University (“MSU”) in 1996.<sup>32</sup> Because of his disability, Ganden took remedial courses that failed to meet the NCAA’s

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<sup>25</sup> See *Parish*, 361 F.Supp. at 1226.

<sup>26</sup> See Gordon S. White, *N.C.A.A. Scraps 1.6 for a Scholastic Ruling*, N.Y. TIMES (Jan. 14, 1973), available at <https://www.nytimes.com/1973/01/14/archives/ncaa-scraps-16-for-a-scholastic-ruling-review-is-asked.html>.

<sup>27</sup> Modello & Abernethy, *supra* note 18, at 129.

<sup>28</sup> Douglas Lederman, *College Athletes Graduate at Higher Rate Than Other Students, But Men’s Basketball Players Lag Far Behind, Survey Finds*, CHRON. OF HIGHER EDUC. (Mar. 27, 1991), available at <https://www.chronicle.com/article/college-athletes-graduate-at-higher-rate-than-other-students.html>.

<sup>29</sup> Modello & Abernethy, *supra* note 18, at 130.

<sup>30</sup> Modello & Abernethy, *supra* note 18, at 135.

<sup>31</sup> See generally 42 U.S.C. § 12181 (1990).

<sup>32</sup> *Ganden v. Nat’l Collegiate Athletic Ass’n*, No. 96 C 6953, 1996 WL 6800000, 1 (N.D. Ill. Nov. 21, 1996).

eligibility standards.<sup>33</sup> Ganden brought an ADA claim against the NCAA to gain eligibility.

Under the ADA, both public and private entities that operate as places of public accommodation must not discriminate on the basis of disability and must provide reasonable accommodations for people with disabilities.<sup>34</sup> The court rejected Ganden's claim, finding that lowering the minimum GPA requirement for Ganden would "fundamentally alter" the nature of the "privilege of participation in intercollegiate swimming."<sup>35</sup>

The aftermath of *Ganden v. NCAA* prompted a tidal wave of change for the NCAA's eligibility rules and procedures regarding prospective student-athletes with learning disabilities. In 1997, the Department of Justice Civil Rights Division concluded that the NCAA had not properly accommodated student-athletes with learning disabilities.<sup>36</sup> The NCAA later altered its rules to accommodate student-athletes with learning disabilities, taking incremental steps toward inclusivity for individuals of different intellectual abilities to meet the minimum standards demanded of the ADA.<sup>37</sup>

#### NCAA as a Public Accommodation: *Bowers v. NCAA*

Soon after *Ganden*, the NCAA attempted to rid itself of disability litigation once and for all. The NCAA saw their chance to escape ADA regulations in *Bowers v. NCAA*.<sup>38</sup> Michael Bowers, a promising football prospect, had been in special education courses since the second grade.<sup>39</sup> He earned admission to Temple University through a regular admissions process but without eligibility status from the NCAA.<sup>40</sup> Bowers sued the NCAA under

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<sup>33</sup> *Id.* Ganden's cumulative GPA remained at 2.09. Under NCAA bylaws at the time, his ACT compiled score of 76 required that he achieve a GPA of 2.275 in 13 "core courses."

<sup>34</sup> 42 U.S.C. §§ 12181-12189 (2017) (prohibiting discrimination "on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.").

<sup>35</sup> *Id.* at 15-16.

<sup>36</sup> ARCHIVE OF ADA ENFORCEMENT, NAT'L COLLEGIATE ATHLETIC ASS'N CONSENT DECREE (2001), available at <https://archive.ada.gov/ncaa.htm>.

<sup>37</sup> *See, e.g.*, 42 U.S.C. §§ 12181-12189 (2017).

<sup>38</sup> *Bowers v. Nat'l Collegiate Athletic Ass'n*, 974 F. Supp. 459 (D. NJ 1997).

<sup>39</sup> *Id.* at 461.

<sup>40</sup> *Id.* at 463.

the ADA and asked for a preliminary injunction that would force the NCAA to grant him eligibility status to play football and allow him to receive an athletics scholarship from the university.<sup>41</sup>

The NCAA argued that it was not a public accommodation under the ADA since “it does not own, lease or operate a place of public accommodation,” and was thus not subject to the ADA.<sup>42</sup> The court held that, because the NCAA exhibited significant power to control, manage, or regulate places of public accommodations and participation standards—such as academic eligibility standards—the NCAA fell within the ADA’s scope.<sup>43</sup> Further, the court distilled that the ADA’s prohibition against discrimination extended beyond physical disabilities.<sup>44</sup>

These cases set the groundwork for the NCAA’s current academic eligibility process. The NCAA must abide by the standards of the ADA as it is a public accommodation and is not required to adjust its initial academic eligibility requirements if such a change would “fundamentally alter” its rules.

The NCAA’s insistence on creating stringent academic guidelines and exclusionary waiver process for EIDs illustrates that being inclusive to student-athletes with learning disabilities is an exception, not the norm within the organization. Even though it abides by the ADA, the imposition of the NCAA’s exacting academic standards leaves little room for students with learning disabilities to demonstrate their competencies in the classroom and “on the field.”

### *Current NCAA Initial Academic Eligibility Standards*

The NCAA has specific standards for academic eligibility for student-athletes intending to play at Division I or II member institutions. Student-athletes must complete core secondary education classes with a certain GPA to qualify for student-athlete status at these institutions.<sup>45</sup>

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<sup>41</sup> *Id.* at 460.

<sup>42</sup> *Id.* at 483.

<sup>43</sup> *Id.* at 489.

<sup>44</sup> *Id.* at 467, 483, 488.

<sup>45</sup> *Academic Standards for Initial Eligibility*, NAT’L COLLEGIATE ATHLETIC ASS’N, available at <https://www.ncaa.org/sports/2013/11/25/academic-standards-for-initial-eligibility.aspx>.



The NCAA sets the following eligibility requirements for student-athletes aspiring to compete at Division I and Division II institutions: graduating from high school; completing a minimum of 16 core courses for Division I or II; earning a minimum requirement grade-point average in core courses; and requesting final amateurism certification from the NCAA Eligibility Center.

For student-athletes attending Division I schools, additional requirements include: earning a 2.3 grade-point average in core courses; meeting an increased sliding-scale standard that evaluates both standardized test scores and grade-point averages; and successfully completing ten of the sixteen total required core courses before the start of their seventh semester in high school, with seven of the ten courses must be successfully completed in English, math, and science.<sup>46</sup>

Because of the COVID-19 pandemic, the NCAA made standardized test scores optional for the 2020-2021 academic year. As of 2023-2024, the no-test policy remains in effect.

The NCAA's strict academic standards give the institution the power to decide not only a student-athlete's athletic prospects but future academic prospects. When denying a student the opportunity to play at the intercollegiate level, the NCAA effectively states that the student would fail at "balancing both academic and athletic demands."<sup>47</sup> Nevertheless, students with learning disabilities succeed in the classroom when institutions provide proper learning accommodations and environments.<sup>48</sup>

Although higher education institutions require independent admissions processes, the NCAA has the ultimate say in whether a student is eligible for collegiate play. The NCAA holds firm that student-athletes must meet its standards unless they meet specific criteria to receive disability waivers. The burden lands on student-athletes with learning disabilities to seek accommodations from the NCAA during this process.<sup>49</sup>

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<sup>46</sup> *Id.*

<sup>47</sup> Maureen A. Weston, *The International Right to Sport for People with Disabilities*, 28 MARQ. SPORTS. L. REV. 1 (2017), available at <http://scholarship.law.marquette.edu/sportslaw/vol28/iss1/2>.

<sup>48</sup> UNIV. OF WASH. COLL. OF EDUC., *supra* note 13.

### Disability Waivers

Rather than adapting the existing eligibility model to include all individuals, the NCAA's current model for accommodating student-athletes with learning disabilities is a case-by-case analysis. In limited circumstances, the NCAA provides Education-Impacting Disability (EID) waivers to students with documented disabilities.<sup>50</sup>

The NCAA's definition of a disability differs from the ADA, which defines a disability as "a physical or mental impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment."<sup>51</sup> To contrast, "the NCAA defines a disability as a current impairment that has a substantial educational impact on a student's academic performance and requires accommodation."<sup>52</sup>

In ascertaining whether a student-athlete may receive an EID waiver, the NCAA performs an in-depth review of documentation of official diagnosis and written statement to note the initial onset of the symptoms, severity, and potential educational impact.<sup>53</sup> The NCAA grants EID waivers on a case-by-case basis.<sup>54</sup>

An integral aspect of this review is the student-athlete's disclosure of his or her specific impairment, but this component is a voluntary aspect of the waiver process. Some students decide not to disclose their impairment because of concerns about discrimination in the classroom or on the field. A report from the U.S. Government Accountability Office noted that, though a school would best accommodate students with disabilities when such impairments are disclosed, some students choose not to reveal "hidden disabilities,' such as learning disabilities...because they want a fresh start in higher education without the label of having a disability."<sup>55</sup>

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<sup>49</sup> Sarah Stokowski & Stephanie O'Donnell, *Rethinking Disability Inclusion in Intercollegiate Athletics: Examining the NCAA's Mission and Policies*, SPORTS INNOVATION J. 41, 44.

<sup>50</sup> Marcia Ridpath, *Mind, Body and Sport: Education-Impacting Disabilities and the NCAA Waiver Process*, NCAA, available at <https://www.ncaa.org/sports/2014/11/5/mind-body-and-sport-education-impacting-disabilities-and-the-ncaa-waiver-process.aspx>.

<sup>51</sup> 42 U.S.C. § 12102(1)(A)-(C).

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

The NCAA has acknowledged the GAO's findings.<sup>56</sup> Nonetheless, the EID waiver process depends substantially upon the association receiving voluntary disclosures from student-athletes. As the GAO's report noted, student-athletes may hesitate to share their ability status for various reasons.

The combination of this case-by-case analysis system and reliance on voluntary disclosures risks underinclusivity for student-athletes seeking EID waivers. Without these waivers, potential collegiate student-athletes with learning disabilities who choose not to disclose are left with no athletic prospects, and they lose higher education opportunities tied to intercollegiate athletics.

### Negative Impacts of Exclusionary Criteria

Student-athletes with learning disabilities who choose to prove initial academic eligibility still face challenges. The NCAA's process focuses not on what student-athletes with learning disabilities can achieve but on what they have not, serving as an example of exclusionary criteria in practice.

Exclusionary criteria that people with disabilities face can adversely affect their sense of self.<sup>57</sup> Systems that rely on exclusionary criteria that concern ability status and allow for discretionary exceptions single out individuals of different abilities. These differences become the "elephant in the room" and define individuals with disabilities not by what they can achieve but by what they cannot.<sup>58</sup> This process defines student-athletes by the skills they lack, not the skills they possess athletically or could achieve with adequate support from disability services at higher education institutions.

Learning disabilities do not always result in students failing intellectually, even if traditional classroom indicators do not reflect students' potential. For example, students with learning

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<sup>55</sup> *Higher Education and Disability: Education Needs a Coordinated Approach to Improve Its Assistance to Schools in Supporting Students*, U.S. GOV'T ACCOUNTABILITY OFF. (Oct. 2009), available at <https://www.gao.gov/assets/gao-10-33.pdf>.

<sup>56</sup> Ridpath, *supra* note 50.

<sup>57</sup> Anthony John Maher, *Exclusion, Inclusion and Belonging in Mainstream and Disability Sport: Jack's Story*, 15 QUAL. RSCH. IN SPORT, EXERCISE & HEALTH 123, 124 (2022), available at <https://www.tandfonline.com/doi/full/10.1080/2159676X.2022.2111457>.

<sup>58</sup> *Id.*

disabilities that impact reading and writing skills tend to possess strong visual and spatial reasoning skills.<sup>59</sup> While most academic assessments can quantify one's ability to read and write proficiently, few consider an individual's capacity to understand how objects relate in two- and three-dimensional planes.

Instead of focusing on how student-athletes struggle, the NCAA should extend opportunities for affordable higher education and college play by prioritizing the areas in which student-athletes succeed. The waiver process and initial academic eligibility guidelines are potentially underinclusive as they do not allow student-athletes to demonstrate nontraditional forms of intellectual competency.

Beyond risking under inclusivity, exclusionary criteria that disproportionately affects those with disabilities promotes ableism and stigma against people with disabilities.<sup>60</sup> These factors weigh heavily on individuals with disabilities, affecting their senses of self.<sup>61</sup> Further, stigmatization engenders social isolation that leaves people with disabilities at higher risk of depression and anxiety.<sup>62</sup> Pushing exclusionary processes upon student-athletes with learning disabilities unfurls the risk of these negative outcomes.

Student-athletes with learning disabilities who are qualified to play at the college level and have been accepted to higher education institutions should be able to continue enjoying the benefits of sport. The benefits of sports range from physical, social, emotional, and cognitive advantages for participants of all abilities. Participating in sports provides people with disabilities with an identity separate from their disability; a person is not merely a person with a disability but an athlete.

That idea has been recognized on the international stage. The United Nations adopted the U.N. Convention on the Rights of Persons with Disabilities (CRPD) in 2006, establishing the right to

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<sup>59</sup> Linda K. Silverman & Jeffrey N. Freed, *The Visual Spatial Learner*, DAVIS DYSLEXIA ASS'N INT'L (1991), available at <https://www.dyslexia.com/about-dyslexia/dyslexic-talents/the-visual-spatial-learner/>.

<sup>60</sup> Maher, *supra* note 57, at 126.

<sup>61</sup> *Id.*

<sup>62</sup> Eric Emerson, et. al, *Loneliness, Social Support, Social Isolation and Well-Being Among Working Age Adults with and without Disability: Cross-Sectional Study*, 14 DISABILITY & HEALTH J., 1, 4 (2020), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7403030/pdf/main.pdf>.

sport, recreation, and play as international human rights law.<sup>63</sup> While Americans have no right to intercollegiate sport, the sentiment that individuals with disabilities should enjoy the same opportunities in sports is a worthy cause that international policy supports.<sup>64</sup>

## II. APPLYING UNIVERSAL DESIGN FOR LEARNING TO NCAA ELIGIBILITY

“Sport associations, clubs and governing bodies also have a unique role to play to protect human rights by being inclusive and making sure that athletes in all their diversity take part in events.” – United Nations<sup>65</sup>

While the NCAA sought to satisfy the statutory demands of the ADA by granting EID waivers on individualized bases, that solution fails to wholly address the needs of student-athletes with learning disabilities. The NCAA circumscribes the opportunities for student-athletes with learning disabilities to learn both in post-secondary classrooms and within the course of athletics. Further, the NCAA’s current policy undermines its own commitment to promoting diversity and inclusion.

After illustrating how the NCAA’s initial eligibility process hinders the NCAA’s organizational goals, this part recommends a pragmatic and inclusive approach inspired by the tenets of universal design for learning.

### *Limiting the Learning Experience of Intercollegiate Sports*

The NCAA maintains that the educations of student-athletes are not confined to traditional post-secondary courses. The NCAA posits that participating in intercollegiate sports falls within

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<sup>63</sup> Declarations and Conventions Contained in General Assembly Resolutions, UNITED NATIONS, available at [http://www.un.org/documents/instruments/docs\\_en.asp](http://www.un.org/documents/instruments/docs_en.asp) (last visited Oct. 26, 2023). The United Nations adopted CPRD and its Optional Protocol on December 13, 2006, through United Nations, General Assembly Resolution 61/106, annex II. *Convention on the Rights of Persons with Disabilities (CRPD)*, UNITED NATIONS, available at <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-withdisabilities.html> (last visited Oct. 26, 2023).

<sup>64</sup> *Id.*

<sup>65</sup> *Sport and Human Rights*, UNITED NATIONS (July 6, 2023), available at <https://www.ohchr.org/en/statements-and-speeches/2023/07/sport-and-human-rights>.

student-athletes' education: "[i]ntercollegiate athletics programs shall be maintained as a vital component of each institution's broader educational program."<sup>66</sup> Within this framework, the education of student-athletes encompasses a range of learning that occurs both in traditional university classrooms and while carrying out the responsibilities of participating in their sports.

Student-athletes who fail to gain initial academic eligibility do not only lose the privilege of playing their sports. The NCAA precludes these individuals from the learning that occurs when participating in athletics, all while touting these informal lessons as "a vital component" of educational programs.<sup>67</sup> If a member institution admits a student-athlete with a learning disability under its usual admissions standards,<sup>68</sup> that student deserves the opportunity to maximize their learning opportunities both in the classroom and on the playing field.

Despite the NCAA's compliance with the ADA concerning its initial academic eligibility standards, this discrepancy between the NCAA's rhetoric and the practical effects of solely relying on EID waivers as accommodations for student-athletes with learning disabilities highlights the need to substantially change this policy.

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<sup>66</sup> NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, 2022-2023 NCAA DIVISION I MANUAL art. 1A (effective Aug. 8, 2022).

<sup>67</sup> *Id.*

<sup>68</sup> *See* NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, 2022-2023 NCAA DIVISION I MANUAL art. 1A (effective Aug. 8, 2022). "The admission, academic standing, and progress of student-athletes shall be consistent with the policies and standards adopted by the institution." Higher education institutions are not required to admit all students with disabilities, including learning disabilities. Under both the Americans with Disabilities Act, 42 U.S.C. 12101, and Section 504 of the Rehabilitation Act, 29 U.S.C. 794, an individual who, with or without reasonable accommodation, can perform the essential functions of the job is considered "otherwise qualified" and thus cannot be discriminated against because of their disability. In *Southeastern Community College v. Davis*, 442 U.S. 397 (1979), the Supreme Court defined "otherwise qualified" in higher education. Here, "otherwise qualified" means that an applicant to a higher education program meets the essential requirements with or without reasonable accommodation. NCAA member institutions will be responsible for providing reasonable accommodations to students with learning disabilities in the classroom should they be accepted under this "otherwise qualified" standard. Yet, if the student does not meet the program's essential requirements, he or she will not be accepted. If the member institution admits a student who does not meet its essential requirements in a manner inconsistent with its usual admissions policies, it could find itself violating NCAA regulations. *See* NCAA DIVISION I MANUAL art. 1A.

*The NCAA's Commitment to Diversity, Equity, and Inclusion*

The NCAA articulates that the organization “is committed to diversity, equity and inclusion” and “shall create diverse and inclusive environments.”<sup>69</sup> Disability advocates highlight how disability policy is concomitant with diversity, equity, and inclusion efforts.<sup>70</sup> The NCAA has not made an expressed commitment within its legislative texts to promote disability. While the NCAA’s manual focuses explicitly on fostering inclusive spaces for race and gender, disability advocacy is invisible.<sup>71</sup> Instead, the word “disability” is mentioned only in three contexts: institution-provided insurance,<sup>72</sup> calculating the cost of attendance,<sup>73</sup> and accommodations for academic eligibility requirements.<sup>74</sup>

Disability scholars distinguish accommodation from inclusion. The term “accommodation” encompasses modifications or adjustments to barriers.<sup>75</sup> The need for accommodations arises after inaccessible systems or structures have been put into place. Often, individuals with disabilities who seek accommodations must do extra work to gain equal footing by undergoing complex processes. As recounted in Part I, the NCAA instituted eligibility standards without athletes with disabilities in mind. Simply gaining accommodations necessitated lengthy legal battles between the NCAA and student-athletes.<sup>76</sup> As the NCAA’s eligibility model

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<sup>69</sup> NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, 2022-2023 NCAA DIVISION I MANUAL art. 1F (effective Aug. 8, 2022).

<sup>70</sup> Caroline Casey, *Do Your D&I Efforts Include People With Disabilities?*, HARVARD BUS. REV. (Mar. 19, 2020), available at <https://hbr.org/2020/03/do-your-di-efforts-include-people-with-disabilities>.

<sup>71</sup> STOKOWSKI, *supra* note 49, at 48.

<sup>72</sup> NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, 2022-2023 NCAA DIVISION I MANUAL art. 9.2.2.1.2 (effective Jan. 20, 2022).

<sup>73</sup> NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, 2022-2023 NCAA DIVISION I MANUAL art. 15.02.2.1 (revised July 31, 2023).

<sup>74</sup> NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, 2022-2023 NCAA DIVISION I MANUAL art. 14.02.5 (adopted Aug. 8, 2008), art. 14.2.3.3 (effective May 1, 2010), art. 14.2.1.3.1.2 (effective Aug. 1, 2010), and art. 14.4.3.9 (revised Aug. 7, 2008).

<sup>75</sup> Thomas C. Weiss, *People with Disabilities: Accommodation Vs. Inclusion*, DISABLED WORLD (May 16, 2013), available at <https://www.disabled-world.com/disability/accommodation-inclusion.php>.

<sup>76</sup> See *Parish v. Nat'l Collegiate Athletic Ass'n*, 361 F. Supp. 1220 (W.D. La. 1973) (NCAA arguing there is no constitutional right to intercollegiate play for student-athletes with learning disabilities); *Ganden v. Nat'l Collegiate Athletic Ass'n*, No. 96 C 6953, 1996 WL 6800000, 1 (N.D. Ill. 1996) (NCAA arguing that accepting remedial

currently stands, student-athletes with learning disabilities must perform extra tasks to obtain EID waivers.

Inclusion is not the same thing as accommodation. While disability accommodations adjust systems or structures to permit individuals with disabilities to participate in them, disability inclusion creates systems or structures with accessibility in mind.<sup>77</sup> For the NCAA to fully align with its commitment to diversity, inclusion, and equity, it must reimagine its systems and structures to provide equal access for all student-athletes without requiring those with disabilities to do extra work.

### *Universal Design for Learning*

Universal design for learning constitutes a “framework to improve and optimize teaching and learning for all people based on scientific insights into how humans learn.”<sup>78</sup> More specifically, universal design for learning requires that “educational products and environments meet the needs of potential students with a wide variety of characteristics.”<sup>79</sup> Universal design is an ongoing process that institutions take on over the course of providing services to individuals. The system set into place is meant to be malleable, adjusting its processes based on user feedback.<sup>80</sup>

Universities and colleges have seen a dramatic uptick in attendance for students with disabilities, including learning disabilities.<sup>81</sup> As such, universities and colleges across the nation have updated their pedagogical standards to be more accessible for students with learning disabilities, encouraging professors to share campus resources relating to disability services, provide multi-modal methods of learning materials, design distance-learning

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courses as “core courses” would “fundamentally alter” its rules); *Bowers v. Nat’l Collegiate Athletic Ass’n*, 974 F. Supp. 459 (D. NJ 1997) (NCAA arguing that Title III of the ADA, which governs public accommodations, should not apply to the organization).

<sup>77</sup> WEISS, *supra* note 75.

<sup>78</sup> CAST, *About Universal Design for Learning*, available at <https://www.cast.org/impact/universal-design-for-learning-udl>.

<sup>79</sup> Sheryl E. Burgstahler, *Universal Design in Higher Education*, UNIV. OF WASH. PRESS (2013), available at [https://www.washington.edu/doit/sites/default/files/atoms/files/Universal%20Design%20in%20Higher%20Education\\_Promising%20Practices.pdf](https://www.washington.edu/doit/sites/default/files/atoms/files/Universal%20Design%20in%20Higher%20Education_Promising%20Practices.pdf).

<sup>80</sup> *Id.*

<sup>81</sup> UNIV. OF WASH. COLL. OF EDUC., *supra* note 13.



options, and allow students to complete assignments in various methods (delivering an oral speech, written explanation, or videotaped presentation).<sup>82</sup>

The Center for Universal Design at North Carolina State University developed guidelines to aid institutions in properly implementing universal design policies and structures.<sup>83</sup> The following section of this Article employs these standards to reimagine the NCAA's eligibility process in an inclusive manner. Universal design guidelines include the following: equitable use; flexibility in use; simple and intuitive use; perceptible information; tolerance for error; low physical effort; and size and space for approach and use.<sup>84</sup> Guidelines Six and Seven refer predominantly to physical design choices, which is beyond the scope of this Article.

*“Show Us Your Success”: A Model for Initial Academic Eligibility*

Separating users based on ability status unnecessarily stigmatizes individuals of different intellectual abilities. The current NCAA initial eligibility review targets individuals with EIDs. While this current accommodations process seeks to be inclusive for student-athletes with learning disabilities, by merely adhering to the minimal standards of the ADA and singling out students with learning disabilities, the NCAA has failed to fulfill its commitment to instituting fair and inclusive practices. Because of the effects of stigmatization on people with disabilities,<sup>85</sup> the NCAA should go beyond a separatist approach, instead implementing a system intrinsically accessible to student-athletes with learning disabilities that effectively measures the academic success of all prospective collegiate players.

“Show Us Your Success” serves as a recommended initial academic eligibility model for the NCAA. This procedure reimagines the initial eligibility certification process under

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<sup>82</sup> *Id.* at 3.

<sup>83</sup> CENTER FOR UNIVERSAL DESIGN AT N.C. UNIV., *Center for Design Learning*, available at <https://design.ncsu.edu/research/center-for-universal-design/>.

<sup>84</sup> *Id.*

<sup>85</sup> Wang, K., & Ashburn-Nardo, L., *Disability Stigma: Causes, Consequences, and Strategies for Change*, UNDERSTANDING THE EXPERIENCE OF DISABILITY: PERSPECTIVES FROM SOCIAL AND REHAB. PSYCHOL. 11 (2019).

universal design principles. These principles and their recommended guidelines allow prospective student-athletes with learning disabilities to prove their academic affinities alongside their peers, limiting unnecessary segregation within the initial eligibility process.

This model allows prospective student-athletes to submit one of the following to the NCAA to certify their initial academic eligibility:

- 1) GPA with core classes as defined by NCAA Bylaws 14.3.1.3 or 14.3.1.3.1.2,<sup>86</sup>*
- 2) standardized test scores, or*
- 3) a narrative essay/audiovisual submission describing the student's efforts in the classroom and barriers upheld by traditional learning environments.*

This model assesses a student-athlete's competencies based on the evaluation that the student-athlete believes best represents his or her academic strengths. The first option encapsulates the assessment the NCAA typically uses; student-athletes with a 2.3 GPA in core classes, including remedial course options, can submit their high school transcripts to gain eligibility. Student-athletes with ACT or SAT scores that earned them admission into the member institution they aspire to play at can submit that score, even if they tested with accommodations such as extended time. Note, however, that the NCAA would not require the standardized test submission. Finally, the third option expands inclusivity in the initial eligibility review process by permitting student-athletes to advocate for the privilege of participating in intercollegiate sports through a narrative written or audiovisual essay.

The NCAA could certify the legitimacy of written essays by requiring the student-athlete to sign an honor code. Breaking the honor code by cheating on this essay would completely bar student-athletes from eligibility in college. The NCAA High School Review Committee currently investigates the validity of secondary coursework,<sup>87</sup> and it could take responsibility for probing suspicious

<sup>86</sup> NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, 2022-2023 NCAA DIVISION I MANUAL art. 14.3.1.3 and art. 14.3.1.3.1.2.

<sup>87</sup> *High School Review Committee 2023-24 Policies and Procedures*, NAT'L COLLEGIATE ATHLETIC ASS'N (2023) at 5, available at

written essays that generative AI appears to have written or do not reflect the student-athlete's personal experience.

Many higher education institutions recognize video essays recognized as equivalents to written essays.<sup>88</sup> A scholarly audiovisual essay requires students to outline arguments, draft a script, and articulate their arguments orally. Speaking without preparation does not constitute a scholarly video essay. Typically, a five-minute video essay amounts to 750 to 1,000 words; a 10-minute video essay usually has 1,200 to 2000 words.<sup>89</sup> For the NCAA to retain its interest in maintaining academic integrity, NCAA committee members will grade student-athletes using this option by assessing the organization of their essay, communication skills, and substance of their essay attesting to their academic abilities.

"Show Us Your Success" has been thoughtfully designed to align with the NCAA's commitment to inclusivity.<sup>90</sup> Below, this Article explains how the relevant guidelines of universal design apply to this recommended model.

### Equitable Use

The first guideline of universal design is "Equitable Use."<sup>91</sup> A necessary goal of any system should be making a process useful and marketable to people of diverse abilities. Provisions within this guideline encourage institutions to "provide the same means of use for all users: identical whenever possible; equivalent when not" and "avoid segregating or stigmatizing users."<sup>92</sup> Under this guideline, the system should ensure privacy and be appealing to all users.

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[https://ncaaorg.s3.amazonaws.com/committees/ncaa/hsreview/HSRC\\_PoliciesAndProcedures.pdf](https://ncaaorg.s3.amazonaws.com/committees/ncaa/hsreview/HSRC_PoliciesAndProcedures.pdf).

<sup>88</sup> Joel Te Whata, *From Text to Audio Visual*, UNITEC, available at [https://www.researchbank.ac.nz/bitstream/handle/10652/4876/Exegesis\\_JoelTeWhata%28Jasmine%29+.pdf?sequence=5&isAllowed=y](https://www.researchbank.ac.nz/bitstream/handle/10652/4876/Exegesis_JoelTeWhata%28Jasmine%29+.pdf?sequence=5&isAllowed=y).

<sup>89</sup> UNIV. OF NOTTINGHAM, available at <https://www.nottingham.ac.uk/artsdigitalhub/documents/teaching-resources/video-essays.pdf>.

<sup>90</sup> NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, 2022-2023 NCAA DIVISION I MANUAL at xiii.

<sup>91</sup> CENTER FOR UNIVERSAL DESIGN AT N.C. UNIV., *supra* note 83.

<sup>92</sup> *Id.*

In this case, the NCAA must tailor its eligibility requirements to be identical for all prospective student-athletes when possible. Under the “Show Us Your Success” approach, all individuals will have the opportunity to submit either their GPA with core classes pursuant to NCAA Bylaws 14.3.1.3 or 14.3.1.3.1.2,<sup>93</sup> standardized test scores, or a narrative essay/audiovisual submission that attests to the student’s commitment to performing proficiently in the classroom amid barriers to learning.

When an identical approach is not applicable, an equivalent approach should be. Since the “Show Us Your Success” approach includes the option to submit a student’s GPA in core classes labeled “remedial” or “special education,” prospective student-athletes with learning disabilities will have an equivalent, though not identical, pathway to eligibility.

Provision 1b of universal design encourages institutions to avoid segregating and separating students of different abilities when possible.<sup>94</sup> By requiring student-athletes with learning disabilities to obtain proof of their EID as a separate provision of the NCAA Bylaws,<sup>95</sup> the NCAA has ostensibly alienated prospective student-athletes with diverse learning abilities as different. Under the “Show Us Your Success” approach, all prospective student-athletes will be subject to these same requirements, limiting the risk of stigmatization for those with learning disabilities while expanding inclusivity.

Disclosing one’s disability status can be an intimately personal decision. Researchers estimate that the figure of 19% of undergraduate students with disabilities falls short of the true total of students with disabilities since some students purposefully do not disclose their disability status for fear of discrimination or societal stigma.<sup>96</sup> By limiting the reasons prospective student-athletes would have to disclose their ability status since all individuals would be subject to the broadened standards, the “Show Us Your Success” approach protects the privacy of students with disabilities who are hesitant to share this information.

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<sup>93</sup> NCAA DIVISION I MANUAL, *supra* note 86.

<sup>94</sup> CENTER FOR UNIVERSAL DESIGN AT N.C. UNIV., *supra* note 83.

<sup>95</sup> *See* NCAA DIVISION I MANUAL, *supra* note 86.

<sup>96</sup> *See* Stokowski & O'Donnell, *supra* note 49.

To be appealing to all users, the NCAA must ensure it properly disseminates its updated requirements in messaging that signifies all prospective student-athletes fall under this process. Online resources, traditional marketing, and information disseminated through secondary institutions should highlight the inclusive nature of the NCAA's updated eligibility standards.

### Flexibility in Use

Flexibility in use means that a process accommodates a wide range of individual preferences and abilities.<sup>97</sup> As relevant to the initial eligibility standards, institutions should provide a variety of methods for users (Provision 2a) and allow for adaptability for different users' paces (Provision 2d).<sup>98</sup>

The "Show Us Your Success" model takes inspiration from Provision 2a by providing individuals with three options to attest to their academic eligibility. Should a student feel he or she is best represented academically by his or her GPA in core classes (whether those classes are "remedial" or not), that student may submit his or her GPA to the NCAA.

In the event a student who experiences distractions in the classroom (such as a student with ADHD or ADD) in core classes has achieved a standardized test score that best represents his or her academic performance, he or she may submit that instead. For students who feel that neither their core GPA nor standardized test scores adequately reflect their ability to learn, a narrative written essay or audiovisual essay may be used to prove their academic abilities and commitment to learning at the postsecondary level.

The current NCAA Bylaws seemingly adhere to 2d, which requires institutions to provide adaptability to different users' paces. NCAA Bylaw 14.3.1.3.1.1 allows prospective student-athletes to complete one core course the year after graduating high school to satisfy the minimum GPA requirement. For students with EIDs, the NCAA grants them up to three core courses student-athletes may completed in that time frame.

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<sup>97</sup> CENTER FOR UNIVERSAL DESIGN AT N.C. UNIV., *supra* note 83.

<sup>98</sup> *Id.*

### Simple and Intuitive Use

System use should be easy to understand, regardless of the user's experience, knowledge, language skills, or current concentration level. For individuals with learning disabilities, implementing provisions under this guideline allows for independent use, serving as a tool of empowerment and destigmatization.

Provision 3a of universal design suggests that organizations "eliminate unnecessary complexity."<sup>99</sup> Unfortunately, the NCAA's current eligibility scheme hosts extensive complex components, specifically for students with learning disabilities. The NCAA's current eligibility processes require students with learning disabilities to navigate a complicated process to verify their EIDs and apply for waivers if their experiences have not met the organization's academic standards. The "Show Us Your Success" approach limits the risk of unnecessary complications for prospective student-athletes with learning disabilities.

This guideline further recommends implementing a consistent approach that levels users' expectations, as set forth in Provision 3b.<sup>100</sup> All individuals have the same requirements wherever possible. "Show Us Your Success" applies consistently for all students and generally does not separate students with learning disabilities; setting consistent expectations for users of the NCAA's initial eligibility application fulfills this guideline.

As specified under Provision 3c, any system should intrinsically accommodate a wide range of verbal, written, and language skills.<sup>101</sup> Instituting these accommodations within a system saves individuals from barriers to access. Under "Show Us Your Success," the audiovisual narrative essay option would bypass possible language and literacy barriers for otherwise eligible student-athletes.

Under the fourth provision of this guideline (Provision 3d), designers arrange information with the salient pieces at the forefront of an organization's materials. The NCAA should arrange

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<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

promotional materials and website pages for prospective student-athletes accordingly.

Finally, Provision 3e encourages organizations to seek feedback on their processes. A system should provide opportunities for participants to share about their positive, neutral, and negative experiences when undergoing that system. In the context of the NCAA, the association should seek consistent feedback from all student-athletes who undergo the eligibility process.

### Perceptible Information

A design should communicate necessary information effectively to users of all abilities. Pathways to meet this guideline include: using different modes of communication to present essential information; ensuring materials are not only written but designed to be easy to digest for people with visual or audio impairments; and providing compatibility with various techniques for people with sensory limitations to use.<sup>102</sup>

To ascertain a prospective student-athlete's eligibility under "Show Us Your Success," prospective student-athletes will certify their academic eligibility through submitting either their core courses GPA, standardized test scores, or a written or audiovisual essay. The NCAA should present important information in different formats, employing a variety of communicative modes, including pictorial, written, and audiovisual options for disseminating essential information, such as eligibility standards. That information should be easy for prospective student-athletes of different abilities to read and/or hear.

### Tolerance for Error

Universal design guidelines for learning recommend that systems expect some level of error for users and mitigate negative outcomes of user mistakes. In the context of the NCAA's eligibility process, the NCAA's High School Review Committee should employ an assumption of good faith in student-athletes submitting applications.

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<sup>102</sup> *Id.*

As a “fail safe” option for student-athletes with learning disabilities, the NCAA should continue permitting waivers for academic eligibility for students with EIDs. While adhering to general universal design principles encourages the NCAA to not treat individuals with disabilities differently through its eligibility process, certain exceptions may be necessary for maximum accessibility. The goal of universal design is to mitigate the need for exceptions. This model would serve that intention.

Further, this waiver process will be less time-intensive and financially demanding than the NCAA’s current practice. If a prospective student-athlete has third-party documentation from a secondary school, such as an Individualized Education Plan (IEP), that should carry heavy weight in determining whether he or she is entitled to a waiver under “Show Us Your Success.” If the student-athlete does not have access to documentation but would only be eligible under “Show Us Your Success” with a waiver, the NCAA should have a diagnosing practitioner available to certify that the student needs this accommodation, removing the cost for the student and his or her family in retrieving documentation.

Creating an aspect of this revised eligibility model that addresses “tolerance for error” poses problems, nevertheless. Disclosure would remain a major concern as students may fear ramifications of stigma. This Article recommends that the NCAA certify to students using this option that all disability-related documents will be confidential. Students can share their disability statuses to the member institutions and athletic departments at their own discretion.

This “fail safe” option should rarely need to be used in this eligibility scheme but exists to appease the fifth principle of universal design. The NCAA should devote most of its resources dedicated to initial eligibility reviews to upholding a system that is as inclusive as possible while adequately assessing student-athletes’ academic capacities.

#### Adapting the NCAA Regulatory Framework

The NCAA need not abandon its regulatory scheme to implement the “Show Us Your Success” initial academic eligibility framework. While this modification would constitute a substantial shift from the association’s current practices, the end result would



potentially alleviate bureaucratic stress on the organization. Further, the NCAA's landmark changes from past learning disability litigation would continue to be honored within the "Show Us Your Success" model.

### *NCAA Governance Structure*

The NCAA is divided into divisional cabinets;<sup>103</sup> this Article focuses on the Division I and Division II cabinets and subcommittees responsible for initial academic eligibility procedures. Unlike the current initial eligibility model, "Show Us Your Success" hinges on the principle that all prospective student-athletes should undergo the same assessment process to certify their scholastic capabilities before earning NCAA eligibility. Guided by the current separatist approach, both the Division I and Division II cabinets exert resources that the "Show Us Your Success" could preserve in this streamlined approach.

The Division I Academic Cabinet is responsible for "all academic matters" and oversees five committees.<sup>104</sup> Of these, three committees—the High School Review Committee, Student Records Review Committee, and Initial-Eligibility Waivers Committee—operate in an entangled process to certify prospective student-athletes' initial academic eligibility.<sup>105</sup>

The High School Review Committee reviews and determines the validity of high schools and the academic credentials of potential student-athletes.<sup>106</sup> The High School Review Committee currently seeks to confirm whether "unconventional academic policies" or "transcript irregularities" at high schools violate NCAA policies.<sup>107</sup> Post-*Ganden*, this committee is responsible for overseeing high schools adhere to the "core course" requirements of NCAA Bylaw 14.3.1.3.<sup>108</sup> The High School Review Committee will

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<sup>103</sup> *Governance: Advisory Council and Divisional Cabinets*, COLLEGE SPORTS COMMUNICATORS (2023), available at <https://collegesportscommunicators.com/sports/2020/12/11/DivisionalCabinets.aspx>.

<sup>104</sup> *Division I Academic Cabinet*, NAT'L COLLEGIATE ATHLETIC ASS'N (2023), available at <https://www.ncaa.org/sports/2013/11/16/division-i-academic-cabinet.aspx>.

<sup>105</sup> *Id.*

<sup>106</sup> *High School Review Committee 2023-24 Policies and Procedures*, *supra* note 87.

<sup>107</sup> *Id.*

<sup>108</sup> *Id.* at 47.

investigate instances of cheating for written essays and continue assessing the legitimacy of high school “core courses.”<sup>109</sup>

The Student Records Review Committee overlaps by determining policies for reviewing a prospective student-athletes’ academic credentials and/or initial-eligibility waiver.<sup>110</sup> The Student Records Review Committee reviews transcripts and determines the validity of a prospective student-athlete’s academic credentials.<sup>111</sup> This committee would see the most significant shift under the “Show Us Your Success” model.

Under “Show Us Your Success,” the Student Records Review Committee would determine whether a prospective student-athlete’s credentials are sufficient to earn eligibility by assessing either a “core courses” GPA, standardized test score, or narrative essay that can be submitted in written or audiovisual formats. To streamline this process for the Student Records Review Committee, students would submit their credentials into a specified online portal: one for transcripts that attest to a student’s GPA, one for a standardized test score, one for written essays, and one for video essays. The review committee could divide itself into four subcommittees that review submissions for each portal. Further, a computer algorithm could assess the standardized tests and transcripts, leaving more staff available to evaluate the academic strengths of the essay submissions.

Finally, the Initial-Eligibility Waivers Committee—which spans both Division I and Division II—determines whether a prospective student-athlete has an EID, reviews waiver applications, and makes all final decisions for waivers.<sup>112</sup> “Show Us Your Success” will save the NCAA resources within this committee. While “Show Us Your Success” includes a “fail-safe” opportunity for initial eligibility waivers, the goal of the model is to avoid needing waivers. The NCAA can downsize the scale of this

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<sup>109</sup> See NCAA Bylaw 14.3.1.3, *supra* note 66.

<sup>110</sup> *NCAA Student Records Committee 2023-24 Policies and Procedures*, NAT’L COLLEGIATE ATHLETIC ASS’N, 2023, at 2, available at [http://fs.ncaa.org/Docs/eligibility\\_center/ECMIP/PSA\\_Review/SRRC\\_PandP.pdf](http://fs.ncaa.org/Docs/eligibility_center/ECMIP/PSA_Review/SRRC_PandP.pdf).

<sup>111</sup> *Id.* at 4.

<sup>112</sup> *NCAA Division I and Division II Initial-Eligibility Waivers 2023-24 Policies and Procedures*, NAT’L COLLEGIATE ATHLETIC ASS’N, 2023, at 2-4, available at [http://fs.ncaa.org/Docs/eligibility\\_center/ECMIP/PSA\\_Review/SRRC\\_PandP.pdf](http://fs.ncaa.org/Docs/eligibility_center/ECMIP/PSA_Review/SRRC_PandP.pdf).

committee's operations and divert resources to save time and money.

The Division II Cabinet has a significantly broader structure than its Division I counterpart. As noted above, the Initial-Eligibility Waivers Committee oversees both Division I and Division II waiver applications. Other academic issues for Division II student-athletes fall under the Academic Requirements Committee. The capacious nature of this committee would likely allow it to thrive under the "Show Us Your Success" model. The Division II Academic Requirements Committee, like its Division I equivalent, could review eligibility applications using algorithms to assess the positive data of standardized test scores or GPA submissions while diverting remaining resources to the normative essay applications.

The NCAA possesses the requisite resources to carry out the "Show Us Your Success" model. This new structure would continue to allow the NCAA to realize its goal of prioritizing the academic success of student-athletes while foregoing unnecessary stigmatization and exclusionary criteria. Implementing a radical structure of initial academic eligibility falls outside the scope of what the ADA requires. Nonetheless, the NCAA should make its decisions not based on minimal compliance but maximum inclusivity. As an organization that has publicly aligned itself with values of diversity and inclusion, creating systems that intrinsically include those with disabilities must be a priority.

### III. LIVING UP TO ITS OWN STANDARDS

"As one of its core values, the NCAA believes in and is committed to an inclusive culture that fosters equitable participation for student-athletes ... In further recognizing and acting upon this value, the NCAA is increasing efforts to provide opportunities to student-athletes with education-impacting and physical disabilities." –NCAA<sup>113</sup>

Implementing "Show Us Your Success" would be a monumental shift for the NCAA. This change would yield substantial benefits for student-athletes with learning disorders

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<sup>113</sup> NCAA *Inclusion Statement*, NAT'L COLLEGIATE ATHLETIC ASS'N, available at <https://www.ncaa.org/sports/2016/3/2/ncaa-inclusion-statement.aspx>.

and constitute a new era for the NCAA: one of true inclusivity that deserts its ableist history.

*Benefits to Student-Athletes with Learning Disorders*

Utilizing a universal design model tackles the problems associated with the current NCAA initial eligibility review. In avoiding stigmatizing processes and presenting opportunities for all student-athletes to display their academic capacities, “Show Us Your Success” serves as the ideal model to balance the NCAA’s interest in promoting academics with learning-impaired student-athletes’ interests having more inclusive opportunities to enter the world of intercollegiate athletics.

The intrinsically inclusive nature of this recommended model mitigates the risks of further stigmatizing learning disorders. Since all prospective student-athletes will have the opportunity to attest to their academic ability to perform at the college level—either with or without accommodations—the separatist process of granting individualized waivers will not be the automatic approach to accommodating students with disabilities. Indeed, this model seeks inclusion, not mere accommodation.

Student-athletes with learning disabilities will save significant amounts of time, effort, and, for some, money spent on preparing documentation of their disability. Because disclosure will not be necessary under this model, student-athletes with expired documentation or inadequate documentation under the current NCAA standards will not have to retain services from a physician or expert practitioner.

Student-athletes will have a major positive shift in identity as a result of this change. Rather than being defined by their limitations, student-athletes with learning disabilities will display what they can achieve academically. As classroom motivation and confidence are intertwined,<sup>114</sup> this will have a secondary effect of improving academic success for students with learning disabilities.

While NCAA member institutions would maintain the responsibility to adhere to their typical admissions requirements

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<sup>114</sup> Angela Duckworth, *A Surprising Way to Improve Student Motivation and Confidence*, EDUCATION WEEKLY (Oct. 11, 2023), available at <https://www.edweek.org/leadership/opinion-a-surprising-way-to-improve-student-motivation-and-confidence/2023/10>.

for student-athletes with disabilities, the perks of NCAA eligibility for student-athletes with learning disabilities who had been accepted and deemed eligible would be monumental. As the NCAA boasts, student-athletes receive many tangible and intangible benefits to participating in intercollegiate sports.<sup>115</sup> From opening the doors to a college education, athletics scholarships, to NIL earnings, student-athletes with learning disabilities who would slip through the cracks absent a universal design model would gain substantial opportunities because of their NCAA eligibility status. These examples, along with the physical, social, emotional, and cognitive advantages to college athletics, would be available to student-athletes with learning disabilities without the burdens of undergoing extra requirements because of their disabilities.

#### *NCAA's Diversity Initiatives and Disability Inclusion*

While the NCAA has publicly embarked on a mission to foster inclusivity for student-athletes with disabilities,<sup>116</sup> the current process depends on accommodations, not intrinsic inclusion. Meeting the minimum requirements of the ADA may ensure compliance but leaves ample opportunity for the NCAA to expand its accessibility efforts. After decades marred by disability rights litigation—with the NCAA fighting in the courts to avoid accommodating student-athletes<sup>117</sup>—the NCAA owes this radical shift in policy not only to student-athletes with disabilities but to itself. If the NCAA wants to fully align with its values, it cannot merely heed to the ADA's bare minimum standards.

Consigning itself to these minimum ADA standards is at odds with the NCAA's value of diversity, equity, and inclusion. Like many organizations in the United States,<sup>118</sup> the NCAA claims to

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<sup>115</sup> *Benefits to College Student-Athletes*, NAT'L COLLEGIATE ATHLETIC ASS'N, available at <https://www.ncaa.org/sports/2014/1/3/benefits-to-college-student-athletes.aspx>.

<sup>116</sup> *NCAA Inclusion Statement*, NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, available at <https://www.ncaa.org/sports/2016/3/2/ncaa-inclusion-statement.aspx>.

<sup>117</sup> See *Parish v. Nat'l Collegiate Athletic Ass'n*, 361 F. Supp. 1220 (W.D. La. 1973) (NCAA arguing there is no constitutional right to intercollegiate play for student-athletes with learning disabilities); *Ganden v. Nat'l Collegiate Athletic Ass'n*, No. 96 C 6953, 1996 WL 6800000, 1 (N.D. Ill. 1996) (NCAA arguing that accepting remedial courses as "core courses" would "fundamentally alter" its rules); *Bowers v. Nat'l Collegiate Athletic Ass'n*, 974 F. Supp. 459 (D. NJ 1997) (NCAA arguing that Title III of the ADA, which governs public accommodations, should not apply to the organization).

prioritize diversity while trailing in disability rights initiatives. The NCAA should not end its efforts to include student-athletes with learning disabilities with the EID waiver process. The universal design for learning model of “Show Us Your Success” serves as a substantially more inclusive alternative that still assesses students’ capacity to succeed in a college classroom setting.

Meaningful diversity, equity, and inclusion efforts require thoughtful, significant campaigns that engender access for those with disabilities. Well-designed online posters<sup>119</sup> and blog posts only go so far in tangible disability inclusion efforts. Though NCAA has made a commitment to diversity and inclusion, the organization has not codified a commitment to accommodating different abilities in its bylaws.<sup>120</sup> The NCAA’s actions—and inaction—demonstrate that disability inclusion has not made its way to the top of its priorities.

As it stands, the NCAA meets the minimum guidelines demanded of the ADA and publishes content that signal diversity, inclusion, and equity for disabled athletes is one of its major goals. Asking student-athletes with learning disabilities to complete more work than their peers through the EID waiver process to prove their academic eligibility may meet the bare minimum, but it is not a process that is intrinsically inclusive.

The ADA requires places of public accommodation to provide accessible alternatives. Relying on alternative forms of access indeed promotes accessibility but only in a limited manner. The underlying structures of systems not designed with disability in mind then depend on separatist approaches to accommodate those with disabilities.

A fully realized approach to disability policy focuses not merely on accommodation but inclusion. Inclusive disability policy,

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<sup>118</sup> Caroline Casey, *Do Your D&I Efforts Include People With Disabilities?* HARVARD BUS. REV. (Mar. 19, 2020), available at <https://hbr.org/2020/03/do-your-di-efforts-include-people-with-disabilities>.

<sup>119</sup> See, e.g., *Guidance on Inclusive Language*, NAT’L COLLEGIATE ATHLETIC ASS’N, available at [https://ncaaorg.s3.amazonaws.com/inclusion/bestprac/NCAAINC\\_GuideInclusiveLanguage.pdf](https://ncaaorg.s3.amazonaws.com/inclusion/bestprac/NCAAINC_GuideInclusiveLanguage.pdf).

<sup>120</sup> See generally NATIONAL COLLEGIATE ATHLETIC ASSOCIATION CONSTITUTION AND BYLAWS, xiii, available at <https://www.ncaapublications.com/productdownloads/D123.pdf>.

contrary to accommodations-based approaches, asks the questions of universal design: Can all individuals, regardless of ability status, enjoy this system or structure? In doing so, that policy has created an intrinsically inclusive space.

Intrinsically inclusive processes do not separate users based on abilities. All users can take advantage of such processes regardless of ability status. “Show Us Your Success” rests on the belief that accessibility for those with disabilities does not necessitate separating them from their peers. Unlike the current NCAA initial academic eligibility scheme, this recommended model does not rely on exclusive systems that reinforce stigmatization.<sup>121</sup> Further, the “fail safe” waiver that the fifth principle necessitates will be more accessible as it accepts IEPs or requires the NCAA to connect students with a *pro bono* diagnosing practitioner.

Learning disabilities are examples of diverse abilities that, in some settings, serve as inhibitors to success; in other contexts, learning disabilities bring strengths that neurotypical individuals may not have.<sup>122</sup> The problem is not students with learning disabilities; it is the structures we have retained that disadvantage them. Adopting “Show Us Your Success” as its initial academic eligibility framework would cement the NCAA’s commitment to diversity and disability inclusion.

### *NCAA Retains Academic Integrity*

The first principle listed in Article 1 of the NCAA Bylaws reads: “The Primacy of Academic Experience.”<sup>123</sup> Within this principle, the NCAA hands the responsibility of “establish[ing] and maintain[ing] an environment in which a student-athlete’s activities are conducted with the appropriate primary emphasis on the student-athlete’s academic experience” to member institutions. Above all else, the NCAA sets forth that a student-athlete’s “academic experience” the quintessential goal of intercollegiate athletics.

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<sup>121</sup> Maher, *supra* note 57.

<sup>122</sup> *Strength in Neurodiversity*, AM. PSYCHOL. ASS’N (July 12, 2023), available at <https://www.apa.org/members/content/neurodiversity>.

<sup>123</sup> *Principles*, NATIONAL COLLEGIATE ATHLETIC ASSOCIATION DIVISION I MANUAL, art. 1 at 2.

The NCAA's long established interest in protecting the academic sanctity of intercollegiate sports is valid. In its quest to set rigid initial academic eligibility standards, the NCAA created more barriers for student-athletes with learning disabilities that inhibit this goal.

The NCAA's current model poses limitations of access to affordable higher education for student-athletes with learning disabilities that student-athletes without learning disabilities do not face. Whether arising from the lack of documentation for an EID, insufficient materials provided for a NCAA disability waiver, or the wish to not disclose their disability, some student-athletes with learning disabilities fail the case-by-case criteria of the NCAA's current initial academic eligibility model. Without eligibility to play their sport to subsidize their education, "the primacy of academic experience" is wholly denied to them.

Further, stigmatization—which exclusionary criteria can cause—can lead to worsened academic performance for students with disabilities.<sup>124</sup> Should a student-athlete obtain a disability waiver, the side effects of stigmatization such as anxiety and depression could negatively impact their grades.<sup>125</sup> The NCAA's current policy places academic hurdles for student-athletes with learning disabilities before and during the start of their collegiate careers.

"Show Us Your Success" forestalls the negative side effects of the NCAA's current separatist approach to eligibility and expands access to higher education opportunities for student-athletes with learning disabilities. Colleges and universities will still have the ability to vet applicants based on academic qualifications. If a higher education institutions concludes that an applicant with a disability is "otherwise qualified"<sup>126</sup>—meaning he or she meets the essential requirements of admission with or without reasonable accommodations<sup>127</sup>—that student should be afforded the opportunity to attend and play their desired sport at that school.

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<sup>124</sup> Pescosolido Bernice A., *The Public Stigma of Mental Illness: What Do We Think; What Do We Know; What Can We Prove?* J. OF HEALTH & SOCIAL BEHAVIOR 1–21 (2013), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4437625/>.

<sup>125</sup> *Id.*

<sup>126</sup> *Southeastern Community College v. Davis*, 442 U.S. 397 (1979).

<sup>127</sup> 42 U.S.C. 12112(b)(5)(A).



Indeed, universities and colleges that accept students into their programs provide accommodations for eligible students with disabilities, including learning disabilities. As stated in its first principle, member institutions are responsible for establishing and maintaining atmospheres that place a “primary emphasis on the student-athlete’s academic experience.”<sup>128</sup> “Show Us Your Success” gives the NCAA ample opportunity to vet student-athletes for academic achievement without overstepping into what it has designated is member institutions’ responsibilities.

This does not mean that the NCAA forfeits its value of academic integrity. Should a student fail to maintain academic eligibility while in college—including students with learning disabilities utilizing member institution’s services—then it is clear that the demands of both sport and learning are too much for that individual. The NCAA, however, should not be overbroad in limiting access through initial academic eligibility, as many students with learning disabilities may succeed both academically and in their sport.

In tandem with collegiate admissions policies, the “Show Us Your Success” NCAA model will safeguard academic standards in intercollegiate sports. College athletics is capacious enough to permit student-athletes with learning disabilities to learn with appropriate accommodations and participate in their sports at the post-secondary level.

#### CONCLUSION

This Article has sought to achieve four purposes. First, the Article explained the history of the NCAA’s fraught relationship with disability rights concerning student-athletes with learning disabilities. Second, it lay out the concerns of relying solely on the ADA’s minimum guidelines for accessibility in initial academic eligibility. Third, it proposed an initial academic eligibility process inspired by universal design for learning principles to mitigate the adverse effects and concerns of the NCAA’s present approach. Finally, it illustrated how this approach would not only benefit student-athletes with learning disabilities but permit the NCAA to align more fully with its values.

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<sup>128</sup> See NCAA DIVISION I MANUAL, *supra* note 120.

