UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

NORTHWESTERN UNIVERSITY	)	
	)	
Employer,	)	
	)	
v.	)	Case 13-RC-121359
	)	
COLLEGIATE ATHLETES PLAYERS ASSOCIATION (CAPA)	)	
	)	
Petitioner.	)	

BRIEF OF *AMICUS CURIAE* THE BIG TEN CONFERENCE, INC.

Andrew S. Rosenman
MAYER BROWN LLP
71 S. Wacker Drive
Chicago, IL 60606-4637
(312) 701-8744
arosenman@mayerbrown.com

Brian D. Netter
Thomas P. Wolf
MAYER BROWN LLP
1999 K Street, NW
Washington, DC 20006-1101
(202) 263-3339
bnetter@mayerbrown.com
twolf@mayerbrown.com

Counsel for Amicus Curiae
The Big Ten Conference, Inc.

Dated: July 3, 2014

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

Cases

Statutes, Rules and Regulations

Other Authorities

INTRODUCTION

When The Big Ten Conference, Inc. ("The Big Ten"), was founded in 1896, its objective was to foster fair intercollegiate athletic competitions among preeminent academic institutions. For more than a century, The Big Ten, in conjunction with the National Collegiate Athletic Association ("NCAA"), has done just that—facilitating fair athletic competitions among students at some of the top institutions in the nation who participate as athletes on the varsity teams of their respective schools ("student-athletes"). Big Ten student-athletes learn leadership, teamwork, goal setting, discipline, winning and losing with dignity, and a litany of other lifelong skills as they progress toward undergraduate and graduate degrees. And there are legions of Big Ten alumni who have benefited from their experiences as student-athletes—whether they ultimately pursue careers as educators, leaders of industry, or professional athletes.

The Decision of the Regional Director for Region 13 strikes at the heart of The Big Ten's mission. Under the Regional Director's view, Northwestern's scholarship football student-athletes are "employees" who are entitled to engage Northwestern (their "employer") in collective bargaining over a wide range of issues. Such bargaining would undermine the uniformity of rules and practices that ensures fairness in conference competition. It would flout precedents that have suited generations of student-athletes who have understood that their Big Ten experience is not a "job" in any reasonable sense of the term. And it would demean the culture and community of intercollegiate athletics that has thrived for more than 100 years in The Big Ten.

The Regional Director's Decision is flawed and unwarranted. It should be reversed.

INTEREST OF THE AMICUS

The Big Ten is one of the nation's premier collegiate athletic conferences. For its member-institutions, The Big Ten controls, promotes, and regulates intercollegiate athletics of its

member institutions, insists on sound academic practices and standards for student-athletes, and fosters harmonious intercollegiate relationships. As of July 1, 2014, The Big Ten has fourteen member institutions, all of which field men's football teams—the University of Illinois at Urbana-Champaign; Indiana University; the University of Iowa; the University of Maryland; the University of Michigan; Michigan State University; the University of Minnesota-Twin Cities; the University of Nebraska-Lincoln; Northwestern University; The Ohio State University; Pennsylvania State University; Purdue University; Rutgers, the State University of New Jersey; and the University of Wisconsin-Madison.

With the exception of Northwestern, all of The Big Ten's member institutions are public universities, which means that only Northwestern is subject to the National Labor Relations Act ("NLRA").

The Big Ten thrives as an academic and an athletic enterprise because its members are committed to rules that encourage academic excellence and ensure a level athletic playing field. The Regional Director's Decision disrupts The Big Ten's principal mode of governance, undermines the uniformity of its rules governing competition, and exposes its institutions to an array of new statutory obligations that were not designed to regulate intercollegiate athletes. The Decision thus directly implicates The Big Ten's operation as a coherent, competitive conference.

Pursuant to the order dated May 12, 2014 inviting briefs, this brief is limited to the following issues: "policy considerations relevant to … the status of grant-in-aid scholarship football [as] 'employees'" under the NLRA (Issue 3), the relevance of other bodies of federal and state law to any determination of the players' status as "employees" under the NLRA (Issues 4 and 5), and "the existence of outside constraints on the parties' ability to engage in collective bargaining as to certain terms and conditions of employment" (Issue 6).

ARGUMENT

I. COLLECTIVE BARGAINING BY A SINGLE TEAM IS INCONSISTENT WITH THE ATHLETIC AND ACADEMIC OBJECTIVES OF THE BIG TEN.

The Big Ten and its member institutions are dedicated to both athletic and academic excellence. Achieving excellence on the field requires common rules of competition for all Big Ten members; achieving excellence off the field requires common standards of academic eligibility. The Regional Director's Decision—which calls for collective bargaining on a team-by-team basis and does not place any limits on the subjects of bargaining—threatens The Big Ten's dual objectives by undermining uniformity and risking the dilution of academic eligibility standards.

A. Collective Bargaining By Student-Athletes Undermines Equality And Fairness Among The Conference's Members.

In the interest of promoting competition and complying with NCAA bylaws that promote the same, The Big Ten has enacted a detailed body of rules and other guidelines. The Big Ten develops, promulgates, interprets, and enforces these rules in conjunction with NCAA bylaws through an institutional structure that requires participation from all of its members. As the Supreme Court itself has recognized, "[s]ince its inception in 1905, the NCAA has played an important role in the regulation of amateur collegiate sports." *NCAA v. Bd. of Regents*, 468 U.S. 85, 88 (1984) And the rules are—by necessity—comprehensive, leaving little room for institutional variation on a wide range of policy issues. Because of their comprehensiveness, the rules are flatly incompatible with team-by-team collective bargaining. Requiring teams (like Northwestern's football team) to engage in bargaining as to matters governed by Big Ten rules would undermine the uniformity that The Big Ten exists to provide. It also would run plainly afoul of the bedrock principles of amateurism on which the NCAA and The Big Ten are founded. Indeed, in *Board of Regents*, the Supreme Court emphasized that "[t]he NCAA plays a

critical role in the maintenance of a revered tradition of amateurism in college sports." *Id.* at 120.

1. Uniform rules are necessary for athletic conferences.

In order to foster competitive contests between equally situated academic institutions, The Big Ten and its member institutions must be able to establish and enforce mutually binding ground rules to govern competition within the conference. The Big Ten is not unique in this regard. Courts routinely recognize that sports leagues require generally applicable rules if they are to produce competitive games of a particular type. "All agree that cooperation off the field is essential to produce intense rivalry on it—rivalry that is essential to the sport's attractiveness in a struggle with other sports, and other entertainments in general, for audience." *Chicago Prof'l Sports Ltd. P'ship v. NBA*, 961 F.2d 667, 672 (7th Cir. 1992); *see also McCormack v. NCAA*, 845 F.2d 1338, 1344 (5th Cir. 1988) ("'in some sporting enterprises a few rules are essential to survival'") (quoting *Hatley v. Am. Quarter Horse Ass'n*, 552 F.2d 646, 652 (5th Cir. 1977)). The U.S. Supreme Court, in turn, has concluded that "most of the regulatory controls of the NCAA"—which are implemented by the conferences and their member institutions—"are justifiable means of fostering competition among amateur athletic teams." *Bd. of Regents*, 468 U.S. at 117; *see also, e.g.*, *Marucci Sports L.L.C. v. NCAA*, 751 F.3d 368, 374 (5th Cir. 2014) (explaining that "'rules defining the conditions of the contest'" and "'the eligibility of participants'" are "presumptively procompetitive and are not generally deemed unlawful restraints on trade") (quoting *Bd. of Regents*, 468 U.S. at 117); *id*. at 376 (similar).

2. Collective bargaining would undercut that necessary uniformity.

Fair conference competition cannot be achieved if one team is permitted to write its own rules through collective bargaining. Under the NLRA, once a union has been certified, the employer is required to bargain as to "wages, hours, and other terms and conditions of

employment" (NLRA § 8(d))—concepts that have been broadly construed by Board precedent. It is an unfair labor practice for an employer to refuse to bargain as to these mandatory subjects of bargaining (*id.* § 8(a)(5)).

That means that a university with a unionized football team would face a choice between Scylla and Charybdis. As discussed below, numerous NCAA and Big Ten rules would likely be considered mandatory subjects of bargaining. If the university refused to negotiate, it would face harsh sanctions for its supposed unfair labor practices. If the university did negotiate, it would face sanctions for its breaches of NCAA and Big Ten rules in the event an agreement were reached on any number of bargaining issues.

If Northwestern were forced to bargain collectively with its football team, the effects on The Big Ten would be serious. Take, for example, The Big Ten's academic requirements. In recognition of the fact that student-athletes are students first, Big Ten rules require freshman student-athletes to complete 12 units of academic coursework per term. *See* Big Ten Conference Handbook 2013-2014, Rule 14.3.1.A (Exhibit A). This rule is consistent with the academic mission of The Big Ten. *See infra* Section I.B. If Northwestern's scholarship student-athletes were "employees," this coursework requirement would be a condition of their employment as to which Northwestern would be required to bargain. And if Northwestern agreed to a concession—say, that 9 units of school-year academic coursework would be enough for student-athletes who promised to take summer classes—the unfairness would be palpable. At each stop on its league slate, Northwestern would face an opponent whose student-athletes were working harder at attaining the education that is central to attending college—an education facilitated by participating as a scholarship athlete in a varsity sport. Not only would this further contribute to

an unlevel playing field among Big Ten schools, it also would increase the risk of Northwestern emphasizing athletics over academics, thereby undermining The Big Ten's mission.

Or suppose the football team's bargaining representative were more interested in negotiating financial terms. This would violate the fundamental principles of amateurism that are a bedrock of NCAA bylaws and Big Ten rules. Wages are a mandatory subject of bargaining under the NLRA, but are at the same time a major source of NCAA limitations. If Northwestern were required to compensate its scholarship football players with more than a full grant-in-aid scholarship (*see* Big Ten Rule 15.5.1.10), Northwestern would gain a substantial edge. Contests between a team of paid professionals and squads of student amateurs are not the picture of parity and equality that makes Big Ten football engaging, entertaining, and publicly valued.

Yet another obvious example in which Northwestern would have a significant advantage over the other Big Ten schools is in the area of recruiting. Such advantages would exist even though Northwestern itself opposes unionization of student-athletes, and even though Northwestern's coaching staff might never attempt to use any advantages to the disadvantage of other schools. Indeed, it is easy to think of countless circumstances in which current players or other supporters of Northwestern (fans, alumni, donors, student-athletes in other sports, etc.) could highlight benefits available to recruits from the collective bargaining of then-enrolled football players that would, as a matter of law, be unavailable to recruits at The Big Ten's public universities. This would allow any number of individuals to use the unbalanced off-the-field rules that would result from unionization to lure recruits to Northwestern. If the Regional Director's decision is upheld, Northwestern's players might, for example, negotiate additional free tickets for their family members at home and away games, secure enhanced health insurance benefits, or negotiate other enticements that they, their fans, the school's donors and many others

could use to help persuade high school recruits to come to Northwestern, to the disadvantage of the public universities (such as Ohio State, Indiana, Purdue and Wisconsin) within The Big Ten that cannot, as a matter of law, offer those benefits because of state law restrictions on collective bargaining. *See infra* Section I.A.3.

Permitting Northwestern's scholarship football players to unionize also would threaten the spirit of fair play and competition on the field. Suppose that Northwestern's players decided, for example, to strike and not play in one or more games because of some dispute they have with the university. Such a refusal to play surely would impact Northwestern negatively in a variety of ways, such as alumni and fan disapproval, potential lost Bowl Game opportunities, refunded ticket sales, and so forth. Equally important, however, such a strike also would adversely affect any other Big Ten teams against whom Northwestern were scheduled to play. Those schools also would be forced to cancel games, lose ticket sales, and miss out on many opportunities unrelated to revenues. Football weekends are one of the many ways in which schools bring prospective students, whether or not they are student-athletes, to a campus to learn about the school's academic offerings as well as its game-day community, pageantry, and so on. The spirit of fair competition and harmonious relations among Big Ten schools would be severely undermined if one team could decline to play because of disagreements with its "employer" university. Even in the *professional* leagues, where the players (unlike student-athletes) are employees working for an employer, the players on any individual team cannot strike on their own. It would be completely irrational to afford such an opportunity to Northwestern's football players, but that is precisely what the Regional Director's decision has done.

The football players could also seek to rework existing drug testing protocols. Drug testing is both a mandatory subject of collective bargaining (*Johnson-Bateman Co.*, 295 NLRB

180, 182-84 (1989)), and heavily regulated by The Big Ten and NCAA (*see, e.g.*, Big Ten Conference Handbook App'x F (setting forth the Conference's drug testing protocol and procedures)). The existing drug protocols help maintain parity and competitiveness by preventing student-athletes from consuming, among other things, performance enhancing drugs. Modify or eliminate drug bans or penalties, and student-athletes may soon find themselves in competition with others who possess distinct and unfair physical advantages.

Not all of the possible topics of bargaining would benefit Northwestern's football players. Drug testing protocols, for example, not only ensure competitiveness, but also ensure the health and safety of student-athletes by protecting them from dangerous substances. Likewise, suppose that Northwestern were required to bargain as to its policies for medical screening. Big Ten Agreement 16.4.1 provides that "[e]ach student-athlete shall have an initial physical examination when they enter a Conference intercollegiate sports program." If the bargaining representative wanted to reduce the risks that star recruits would be excluded from the team for medical reasons, the terms—or the existence—of the physical examination would be up for negotiation. Breaching that rule would put Northwestern's players at greater risk of injuries on the gridiron.

The list goes on. Indeed, Big Ten and NCAA rules govern a wide variety of areas that would likely be considered mandatory subjects of bargaining, including: benefits for enrolled student-athletes—including complimentary admissions and ticket benefits (Big Ten Agreement 16.2) and training table meals (Big Ten Agreement 16.5)—which resemble wage supplements; seasons of competition (Big Ten Rule 14.2), which establish the times during which the student-athlete "employees" would perform their "labor"; eligibility and academic progress criteria (Big Ten Rules 14.3 and 14.4), which are analogous to promotion standards; and transfers between

institutions (Big Ten Rules 14.5 and 15.01). In each of these circumstances, The Big Ten and NCAA have established uniform rules because uniformity is important. It would hardly be fair if Northwestern's football team were permitted to highlight benefits to potential recruits that state universities cannot offer, to travel with a larger group of its fans, or to start official team practices earlier in the summer, to name just a few examples. But some version of this inequality is inevitable if Northwestern's scholarship football student-athletes are treated as "employees" and entitled to initiate mandatory collective bargaining.

3. The perils of unionized student-athletes are particularly strong because only one team could be unionized.

For The Big Ten, the risks of a breakdown in Conference uniformity are particularly worrisome because Northwestern is the only Big Ten institution subject to the NLRA. *See* 29 U.S.C. § 152(2) (the NLRA applies only to private institutions). The league's other 13 teams are governed by a patchwork of state collective bargaining laws. Each state has a different statute, but the public institutions share one significant attribute in common—none is required to treat its student-athletes as employees.

Indeed, as "a proactive response to" the Regional Director's Decision, Ohio (home to The Ohio State University) recently passed a law designed specifically to confirm that college athletes are not bargaining-eligible. H.B. 483 § 3345.56, 130th Gen. Assemb., 2013-2014 Sess. (Ohio 2014); Ohio House of Representatives, 130th Gen. Assemb., *House Bill 483, the MBR's Main Appropriations Bill, Passes Ohio House*, Majority Caucus Blog (Apr. 9, 2014), http://www.ohiohouse.gov/republicans/press/house-bill-483-the-mbrs-main-appropriations-bill-passes-ohio-house. The Ohio House Bill provides in relevant part that "a student attending a state university . . . is not an employee of the state university based upon the student's participation in an athletic program offered by the state university." H.B. 483 § 3345.56. The

Ohio Senate also passed the bill by a 24-7 vote with no changes to that provision, and Ohio Governor John Kasich signed the bill into law on June 16, 2014. Mark Kovac, *State Budget Awaits Kasich Signature, Declares College Athletes "Not Employees,"* Vindicator (June 5, 2014), http://www.vindy.com/news/2014/jun/05/state-budget-awaits-kasich-signature-declares-coll/; Ohio House of Representatives, 130th Gen. Assemb., *Governor Kasich Signs House Bill 483* (June 17, 2014), http://www.ohiohouse.gov/robert-sprague/press/governor-kasich-signs-house-bill-483. In Indiana (home to Indiana University and Purdue University), public-sector workers have no collective bargaining rights as a result of a 2005 Executive Order, 05-14. Press Release, In.gov, Governor Daniels Signs Executive Orders to Create Department of Child Services, Rescind Collective Bargaining Agreements (Jan. 11, 2005), http://www.in.gov/governorhistory/mitchdaniels/files/pressreleases/2005/1-11-05.html.[1] And in Wisconsin, public unions may negotiate only about "total base wages." Wis. Stat. § 111.91(3)(a).[2] Thus, opening the door to unionized football players would shut the door on fairness. Each week would bring a new matchup between teams playing under different

[1] Under Indiana law, school teachers and public safety employees retain the ability to engage in collective bargaining. *See, e.g.*, Ind. Code §§ 20-29-4-1(2), 20-29-6-1(1) (pertaining to school teachers); *id*. §§ 36-8-22-1(2), 36-8-22-1(12) (pertaining to public safety employees).

[2] Similar bars to collective bargaining exist in many states outside The Big Ten. For instance, North Carolina, South Carolina and Virginia explicitly prohibit collective bargaining with governmental employees. N.C. Gen. Stat. Ann. § 95-98; *Branch v. City of Myrtle Beach*, 340 S.C. 405, 411 (2000) ("Unlike private employees, public employees in South Carolina do not have the right to collective bargaining."); Va. Code Ann. § 40.1-57.2. In addition, Georgia and Texas also prohibit public sector collective bargaining except for certain law enforcement personnel. *Chatham Ass'n of Educators v. Bd. of Pub. Educ. for the City of Savannah*, 231 Ga. 806 (1974) (Georgia law prohibits public employers from entering into collective bargaining agreements); Tex. Gov't Code Ann. § 617.002. Court decisions in Tennessee have ruled that public sector collective bargaining is illegal (*see, e.g.*, *Fulenwider v. Firefighters Ass'n Local Union 1784*, 649 S.W.2d 268, 270 (Tenn. 1982)), and the legislature has created an exception only for teachers (Tenn. Code Ann. § 49-5-602, *et seq.*).

fundamental rules, differences that would make the notion of deciding athletic supremacy on the field seem quaint.

Rule conflicts that compromise the competitiveness and identity of a conference are an unavoidable hazard of any collective bargaining framework that treats individual teams as the appropriate bargaining units. The example of the major U.S. professional sports leagues is instructive. Each of these major leagues—Major League Baseball, the National Basketball Association, the National Football League, and the National Hockey League—employs a collective bargaining framework whereby a single labor organization negotiates with *all owners* on behalf of *all players*. *See* Major League Baseball, *MLBPA Info*, http://mlb.mlb.com/pa/info/ (last visited June 23, 2014); Nat'l Basketball Players Ass'n, *What We Do*, http://www.nbpa.org/what-we-do (last visited June 23, 2014); Nat'l Football League Players Ass'n, *About Us*, https://www.nflplayers.com/about-us/ (last visited June 23, 2014); National Hockey League Players' Ass'n, *Collective Bargaining Agreement*, http://www.nhlpa.com/inside-nhlpa/collective-bargaining-agreement (last visited June 23, 2014). Through this structure, the leagues arrive at agreements regarding revenue sharing, drug testing, and many other issues. This structure ensures that the negotiations undertaken through collective bargaining in each of the professional leagues produce a uniform set of rules governing all members of the league equally. But in The Big Ten—where only one university is subject to the NLRA and the other 13 are state institutions, some in states that expressly mandate that student-athletes are not union-eligible—no uniform set of rules can be attained if any student-athletes are reclassified as "employees."[3]

[3] While this brief focuses on the effects of *intra*-conference competition, the arguments herein apply with equal force to *inter*-conference competition on a broader, national level. Student-athletes at Northwestern could use many of the advantages that might be gained through

B. Collective Bargaining By Student-Athletes Over Academic Standards Is Incompatible With The Academic Mission Of The Big Ten.

The Big Ten and its member institutions strive not only for athletic excellence, but also for academic excellence. As The Big Ten's first principle, the Conference "recognizes the transcendent priority of a student-athlete's academic collegiate experience. It places its highest values upon high academic values. The student-athlete is student first, athlete second." Big Ten Conference Handbook at 11. Big Ten athletics programs are part of a larger academic community that has long been deeply invested in teaching and advancing knowledge. To support their common academic mission, The Big Ten members formed a consortium—the Committee on Institutional Cooperation ("CIC")—as the Conference's "academic counterpart." History of CIC, http://www.cic.net/about-cic/history-of-cic (last visited June 17, 2014). The CIC is a formidable presence in the academy. By the CIC's estimates, fourteen percent of the total doctoral degrees earned in the United States each year are earned at CIC-affiliated institutions. CIC, 2012-2013 Annual Report at 6 of 9, http://www.cic.net/docs/default-source/reports/cic-annual-reportfeb2014.pdf. Moreover, in 2012, The Big Ten's member institutions conducted over $10.06 billion in funded research, nearly double that of both the Ivy League's and the University of California's system. *Id.* at 5 of 9. And all Big Ten Universities have been granted Tier One Status by the Carnegie Foundation for the Advancement of Teaching, a distinction awarded to just over 100 universities. BIG TEN, B1G: HONORING LEGENDS. BUILDING LEADERS,

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collective bargaining to the disadvantage of student-athletes at public institutions in every other state, particularly in states like Ohio that prohibit collective bargaining by student-athletes. Since 2000, Northwestern's football team has played Ohio University, Bowling Green State University, and Miami University, all public institutions within the State of Ohio, on multiple occasions. Under Ohio law, football players at these schools cannot engage in collective bargaining with the university. Thus, in future matchups, Northwestern would have a substantial edge.

http://grfx.cstv.com/photos/schools/big10/genrel/auto_pdf/2013-14/misc_non_event/legends-leaders-13.pdf (last visited June 17, 2014).

The Big Ten's members hold student-athletes to these same high academic standards, chiefly by enforcing extensive NCAA Bylaws (and supporting conference requirements) that set foundational academic thresholds for athletic participation. *See, e.g.*, NCAA Division I Manual 2013-2014 art.14, *available at* https://www.ncaapublications.com/p-4322-2013-2014-ncaa-division-i-manual.aspx; *id*. 14.01.2 (requiring that student-athlete, *inter alia*, "be in good academic standing" in order "[t]o be eligible to represent an institution in intercollegiate athletics competition"), 14.01.4 ("The central purpose of the [NCAA's] academic performance program is to ensure that the Division I membership is dedicated to providing student-athletes with exemplary educational and intercollegiate-athletics experiences in an environment that recognizes and supports the primacy of the academic mission of its member institutions, while enhancing the ability of male and female student-athletes to earn a four-year degree."), 14.01.6 (setting forth "disclosure requirements" regarding member institutions' academic progress rates, academic performance censuses, and graduation success rates), 14.4 (setting forth "progress-toward-degree requirements"); Big Ten Rule 14 (discussed *supra* pp. 5-6).[4] Big Ten student-athletes do not merely meet these requirements, they exceed them: The Big Ten has produced more than 1,450 Academic All-Americans—more than any other conference. BIG TEN, B1G: HONORING LEGENDS. BUILDING LEADERS, *supra*.

[4] The Regional Director incorrectly discounted many aspects of the student-athlete experience that are necessary components of any athletic program seriously committed to ensuring its student-athletes achieve academically. *See, e.g.*, *Northwestern Univ.*, 198 LRRM 1837, 2014 WL 1246914, at *14 (NLRB Mar. 26, 2014) (referencing student-athletes' study hall, tutoring, and professional development requirements).

Any collective bargaining arrangement that would permit student-athletes to loosen academic eligibility requirements imperils The Big Ten's academic mission. The continued academic excellence of The Big Ten's member institutions, its athletic programs, and its student-athletes relies on the institutions being able to set minimum academic requirements beyond which student-athletes cannot pass without losing their eligibility. Undoubtedly, the rigors of high-level athletic competition require student-athletes to budget their time wisely in order to balance their academic and athletic commitments. Nonetheless, under the current regime—which has served The Big Ten and its student-athletes well for many decades—a student-athlete simply cannot privilege athletics to the exclusion of academics: Any student-athlete who does so will find himself or herself ineligible to play. The Preamble to The Big Ten's Guiding Principles notes that The Big Ten "has always asserted that it will excel in athletics without relinquishing or compromising the priority its member institutions assign to their academic standards and commitment to student academic success." Big Ten Conference Handbook at 11. The very first Guiding Principle, "Academic Priority," adds that the Conference will ensure that academic values are the foremost priority "by unilaterally establishing standards that may exceed those accepted nationally." *Id.* Under any collective bargaining regime that would allow student-athletes to lower—or eliminate—the academic prerequisites to athletic participation, there would no longer be any such guarantee of student-athletes' academic performance. The integral link between the "student" and the "athlete"—which The Big Ten has striven to strengthen and maintain in the various ways described above—would thereby be severed.

II. PRECEDENTS FROM OTHER STATUTORY CONTEXTS SHOW THAT IT IS UNWORKABLE TO TREAT STUDENT-ATHLETES AS EMPLOYEES.

In determining whether scholarship student-athletes are "employees" for purposes of the NLRA, the Regional Director noticeably failed to address the substantial body of judicial

decisions concerning whether scholarship student-athletes are "employees." Although there are minor deviations in the standards applicable to various statutes, a common theme resonates—student-athletes are nowhere treated like ordinary employees. The Regional Director likewise ignored other statutes impacting universities' ability to implement team-by-team collective bargaining, such as Title IX. Although not considered by the Regional Director, treating student-athletes as if they were ordinary employees would have serious—and undesirable—collateral ramifications arising from other statutory schemes.

A. The Fair Labor Standards Act Does Not Treat Scholarship Student-Athletes As "Employees" For Good Reason.

The Regional Director's ruling that scholarship football players are "employees" under the NLRA conflicts with existing federal law holding that scholarship student-athletes are not "employees" covered by the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201, *et seq*. FLSA precedents urge a holistic understanding of the relationship between student-athletes and their sponsoring institutions. That complete understanding challenges the Regional Director's key assumptions. Furthermore, the consequences of extending the Regional Director's reasoning into the FLSA context—namely, potentially substantial and unpredictable overtime requirements that could endanger institutions' athletic budgets and discourage continued support for robust, highly competitive athletics programs—suggest the wisdom of a more restrictive view of "employee" status than the one that the Regional Director has proposed.

Federal courts routinely conclude that scholarship student-athletes are not "employees" for FLSA purposes. *See Marshall v. Regis Educ. Corp.*, 666 F.2d 1324, 1328 (10th Cir. 1981); *Solis v. Laurelbrook Sanitarium & Sch., Inc.*, 2009 WL 2146230, at *6 (E.D. Tenn. 2009) (citing *Marshall* with approval), *aff'd*, 642 F.3d 518 (6th Cir. 2011); *cf. O'Halloran v. Univ. of Wash.*, 679 F. Supp. 997, 1003 (W.D. Wash. 1988) (distinguishing NCAA student-athletes from railroad

employees), *rev'd on other grounds*, 856 F.2d 1375, 1381 (9th Cir. 1988); *see also Kemether v. Pa. Interscholastic Athletic Ass'n, Inc.*, 15 F. Supp. 2d 740, 759, n.11 (E.D. Pa. 1998) ("[n]o federal court has defied common sense by holding student athletes to be Title VII employees of their schools or an athletic association").

Marshall is particularly instructive. In addressing the status of student resident assistants, the Tenth Circuit concluded that such students were not "employees" for purposes of the FLSA, even though they received tuition credits in exchange for their services. The court found resident assistants to be no different from "student athletes and leaders in student government"—they "did not come to [the university] to take jobs"; instead, "[t]hey enrolled as full-time students seeking growth and development … and desiring to earn the recognition of an academic degree." 666 F.2d at 1328.

The disparity between the Tenth Circuit's analysis in *Marshall* and the Regional Director's decision below is striking. The Regional Director viewed scholarships in a narrowly economic sense, emphasizing that intercollegiate athletics provide financial benefits for universities and dismissing student-athletes' motivations for enrolling, their participation in a broader academic community, and their receipt of additional substantial non-monetary benefits for enrolling. *See Northwestern*, 2014 WL 1246914, at *12 (opining that Northwestern's "players perform valuable services for" Northwestern and examining the "economic benefit" the football team's play had for the university); *id*. at *17 (emphasizing that "players do not receive any academic credit for playing football" and discrediting the "great life lessons" student-athletes gain "from participating on the football team"). *Marshall* underscores how the Regional Director erred by placing undue weight on student-athletes' receipt of scholarships, which are a

gateway to a broader academic experience and do not describe the entire relationship between a student-athlete and the university.

The treatment of student-athletes under the FLSA is relevant in two respects. *First*, it demonstrates how similar questions have been evaluated by Article III courts—and counsels against the Regional Director's approach. *Second*, it highlights the possible ramifications of treating student-athletes as employees. The judicial decisions assessing the status of student-athletes under the FLSA all involved nonunionized student-athletes, who received scholarships from their universities under the traditional model. But if unionization were deemed permissible under the NLRA, then student-athletes would no longer be receiving scholarships in any traditional sense; they would be bargaining for compensation and working conditions in a manner that may well alter the FLSA calculus. A change in the "employee" status for student-athletes would raise a host of new questions about how to track work hours for questions of overtime pay (*see* 29 U.S.C. § 207(a)(2)) as well as questions regarding the application of state and federal minimum wage laws. Courts would then need to resolve inevitable disputes over which aspects of the collegiate athletic experience constitute compensable work and which do not. That athletic experience includes: participating in intercollegiate competitions; traveling to and preparing for those competitions; practicing and other forms of conditioning and physical training (such as weightlifting); studying game film and scouting reports; reviewing team strategies; undergoing preventative treatment; receiving (where necessary) physical therapy and rehabilitation for injuries; and even eating (which could be considered an integral component of physical conditioning and recovery). *See Northwestern*, 2014 WL 1246914, at *4-8. Some of these activities are supervised by coaches or trainers; others are supervised by senior team members; still others are undertaken voluntarily by individual student-athletes. *See id*. These

considerations underscore that treating student-athletes as employees is not nearly as simple as the Regional Director perceived it to be.

B. State Workers' Compensation Laws Do Not Treat Scholarship Student-Athletes As "Employees" For Good Reason.

The Regional Director's Decision also conflicts with well established state law providing that scholarship student-athletes are not "employees" of their sponsoring institutions and are thus ineligible for workers' compensation benefits. As in the FLSA context, workers' compensation case law from the state courts emphasizes a more nuanced view of student-athletes' relationships with their sponsoring institutions than that presented by the Regional Director here. And, as under the FLSA, the potentially severe economic ramifications of extending the Regional Director's conclusions into the workers' compensation context suggests that the Board should deny "employee" status to scholarship student-athletes.

In the past 50 years, every court to consider the question has rejected the claim that scholarship student-athletes are employees entitled to workers' compensation benefits. *See, e.g.*, *Waldrep v. Tex. Emp'rs Ins. Ass'n*, 21 S.W.3d 692, 702, 707 (Tex. Ct. App. 2000); *Coleman v. W. Mich. Univ.*, 336 N.W.2d 224, 228 (Mich. Ct. App. 1983); *Rensing v. Ind. State Univ.*, 444 N.E.2d 1170, 1175 (Ind. 1983) (holding that scholarship student-athlete was not an "employee" of university and thus not entitled to workers' compensation benefits).[5] In ruling as such, these courts have adopted reasoning similar to that presented in *Marshall*, emphasizing the status of

[5] Two early cases reached the opposite conclusion. *See Univ. of Denver v. Nemeth*, 257 P.2d 423, 430 (Colo. 1953); *Van Horn v. Indus. Accident Comm'n*, 33 Cal. Rptr. 169, 174 (Ct. App. 1963). But *Nemeth* was later distinguished on grounds that make it clearly inapplicable to present-day grant-in-aid scholarship football players. *See State Comp. Ins. Fund v. Indus. Comm'n*, 314 P.2d 288, 289-90 (Colo. 1957) (reasoning that benefits were available in *Nemeth* only because the student-athlete was separately employed by the university as a maintenance worker but would lose that job by virtue of his injury). And *Van Horn* was subsequently overridden by the California Legislature in 1965. *See Shephard v. Loyola Marymount Univ.*, 125 Cal. Rptr. 2d 829, 842-43 (Ct. App. 2002).

student-athletes under the NCAA rules as individuals "'who engage[] in athletics for the educational, physical, mental, and social benefits [they] derive[] therefrom, and to whom athletics is an avocation.'" *Waldrep*, 21 S.W.3d at 701. Likewise, they have deemphasized the importance of scholarships as a form of monetary aid. As the Texas Court of Appeals explained in *Waldrep*, "[f]inancial-aid awards are given to many college and university students based on their abilities in various areas, including music, academics, art, and athletics, and while "these students are [sometimes] required to participate in certain programs or activities in return for this aid" (*id*.) they are "'considered to be students seeking advanced educational opportunities and are not considered to be professional athletes, musicians or artists employed by the [u]niversity for their skill in their respective areas'" (*id.* (quoting *Rensing*, 444 N.E.2d at 1174)); *see also Coleman*, 336 N.W. at 228 (citing *Rensing*, 444 N.E.2d at 1174)). As this precedent emphasizes, the economic aspects of scholarship student-athletes' relationships with their sponsoring institutions are not accurate proxies for the students' status as "employees."

Strong policy reasons support the courts' exclusion of student-athletes from the class of workers'-compensation-eligible "employees." As the Supreme Court of Colorado long ago concluded, it was impossible to "believe that the legislature, in creating the compensation fund, intended that it be in the nature of a pension fund for all student athletes attending [a state's] educational institutions." *State Comp. Ins. Fund*, 314 P.2d at 290. Indeed, classifying student-athletes as employees under state law would effectively transform a state's workers' compensation fund into the insurer of substantial numbers of previously uncovered individuals, and, in turn, load significant financial liabilities onto the fund and its contributors. Sheer economic necessity thus augurs in favor of a narrower, rather than broader, definition of

"employees" when determining the eligibility of any given claimants for benefits under many labor law statutes.

C. Federal Tax Law Does Not Treat Scholarship Recipients As Wage-Earning Employees.

The Regional Director's determination that scholarship football players are "employees" also conflicts with existing IRS determinations, which regard scholarship student-athletes not as wage-earning laborers, but rather as recipients of educational support. Currently, the IRS recognizes that certain components of athletic scholarships—so-called "qualified education expenses"—are nontaxable. *See* I.R.C. § 117(a)-(b). Specifically, the Code exempts from taxation any scholarship money expended on "tuition and fees required for the enrollment or attendance of a student" at a qualifying "educational organization" and "fees, books, supplies, and equipment required for courses of instruction at such an educational organization." I.R.C. § 117(b).[6] Over a four-year scholarship period, these "qualified education expenses" can reach six-figure sums. *See Northwestern*, 2014 WL 1246914, at *12, 17. Although these "qualified scholarships" are obviously quite valuable—and wages of an equivalent monetary value would perhaps be taxable—student-athletes have been able to enjoy them without incurring federal income tax liability. The Regional Director downplayed Northwestern's decision to treat these scholarships as non-taxable income. *Id.* at *12 ("[T]he fact that [Northwestern] does not treat these scholarships or stipends as taxable income is not dispositive of whether it is compensation."). But the IRS's treatment of qualified scholarships strongly suggests that

[6] Although the U.S. Supreme Court has held that payments to students constitute taxable compensation when they are "bargained-for payments, given only as a 'quo' in return for the quid of services rendered" (*Bingler v. Johnson*, 394 U.S. 741, 757 (1969)), the IRS has recognized that athletic scholarships are *not* given in exchange for services pursuant to I.R.C. § 117(c)(1). *See* Rev. Rul. 77-263, 1977-2 C.B. 47.

student-athletes are not workers performing labor for their universities and that the benefits those student-athletes receive from their universities are not remuneration for that labor.

To the extent that the Regional Director appears to have reached his determination without heed to the tax laws, his Decision might harbor significant unforeseen financial consequences for universities and student-athletes alike. Permitting football players to unionize would fundamentally change the nature of their relationship with their universities and could perhaps result in a reevaluation of their tax status. Insofar as unionized players bargain for and receive monetary wages in place of or in addition to their scholarships, the IRS could view such wages as compensation subject to taxation. Any such determination by the IRS would create new tax liabilities for both universities and their student-athletes.

D. Permitting Scholarship Student-Athletes To Bargain On A Team-By-Team Basis Over Wages Or Other Compensation Conflicts With Title IX.

The Regional Director's Decision also failed to account for Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq*. Title IX requires a covered academic institution to make decisions regarding the allocation of financial resources that ensure equality of opportunity within the institution's athletic program *as a whole*. Title IX thus impliedly precludes team-by-team collective bargaining over such subject matter as student-athlete funding and scholarships.

Congress designed Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq*., "to eliminate … discrimination on the basis of sex" in a wide variety of areas (34 C.F.R. § 106.1), including collegiate athletics (34 C.F.R. § 106.41). To this end, Title IX requires colleges and universities to provide "equal athletic opportunity for members of both sexes." 34 C.F.R. § 106.41(c). In assessing whether an institution provides "equal opportunity" to its male and female student-athletes, the Department of Education considers, among other things, the

institution's "[t]ravel and per diem allowance," "locker rooms, practice and competitive facilities," "medical and training facilities and services," and "housing and dining facilities and services." *Id.* To the same end, Title IX also requires institutions to provide equitable apportionment of financial aid for members of both sexes. *See, e.g.*, 34 C.F.R. § 106.37(a). As that funding requirement has been interpreted, scholarships must be awarded in substantial proportion to the rate of participation for male and female student-athletes. U.S. Dep't of Educ., Office for Civil Rights, Dear Colleague Letter: Bowling Green State University (July 23, 1998), http://www2.ed.gov/about/offices/list/ocr/docs/bowlgrn.html. And, as enforced by the Department of Education, Title IX requires both that the average scholarship amount for male student-athletes be within 1% of the average scholarship amount for female student-athletes. *Id.* (interpreting 34 C.F.R. § 106.37(c)).

Team-by-team collective bargaining is incompatible with Title IX's objectives. Title IX calls for universities to administer funds for athletics at the level of the program, adjusting the levels of funding provided to specific student-athletes and teams in order to achieve program-wide balance in the athletic opportunities available to male and female student-athletes. A university can, in turn, assess the permissibility of any given allocation of resources to any given student-athlete or team only with reference to the impact of that allocation on the overall distribution of funds between male and female student-athletes at the program-wide level. By contrast, team-by-team collective bargaining compels universities to establish separate funding agreements for each team. To the extent that a university simply let the course of negotiations with individual teams dictate funding decisions, it is highly unlikely that the university would ultimately reach a Title IX-compliant athletics budget. To the extent that a university attempted to enhance the likelihood of producing a Title IX-compliant budget by coordinating simultaneous

negotiations with individual teams, the university would essentially trade the team-by-team model of collective bargaining mandated by the Regional Director's Decision for something vaguely approximating a university-wide collective bargaining process. In either event, the ultimate incompatibility of team-by-team collective bargaining with Title IX's objectives strongly suggests that Title IX precludes such bargaining.

CONCLUSION

For the preceding reasons, The Big Ten urges the Board to reverse the decision below and hold that scholarship football players are not "employees" under the NLRA.

DATED: July 3, 2014

Respectfully submitted,

/s/ Andrew S. Rosenman
Andrew S. Rosenman
MAYER BROWN LLP
71 S. Wacker Drive
Chicago, IL 60606-4637
(312) 701-8744
arosenman@mayerbrown.com

Brian D. Netter
Thomas P. Wolf
MAYER BROWN LLP
1999 K Street, NW
Washington, DC 20006-1101
(202) 263-3339
bnetter@mayerbrown.com
twolf@mayerbrown.com

Counsel for Amicus Curiae
The Big Ten Conference, Inc.

CERTIFICATE OF SERVICE

I hereby certify that, on July 3, 2014, I caused a true and accurate copy of the foregoing Brief of *Amicus Curiae* The Big Ten Conference to be electronically filed with the National Labor Relations Board and electronically served upon the following:

Gary Shinners
Executive Secretary
NATIONAL LABOR RELATIONS BOARD
1099 14th Street, NW
Washington, DC 20570

Peter Ohr
Regional Director, Region 13
The Rookery Building
209 South LaSalle Street
Suite 900
Chicago, IL 60604-5208
peter.ohr@nlrb.gov
NLRBRegion13@nlrb.gov

John G. Adam
LEGGHIO & ISRAEL, P.C.
306 S. Washington Avenue, Suite 600
Royal Oak, MI 48067-3837
jga@legghioisrael.com

Donald M. Remy
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION
700 W. Washington Street
Indianapolis, IN 46204
dremy@ncaa.org

Jeremiah A. Collins
W. Gary Kohlman
Ramya Ravindran
BREDHOFF & KAISER PLLC
805 15th Street, NW, Suite 1000
Washington, DC 20005-2286
jcollins@bredhoff.com
gkohlman@bredhoff.com
rravindran@bredhoff.com

Joseph E. Tilson
Anna Wermuth
Jeremy Glenn
Alex V. Barbour
MECKLER BULGER TILSON MARICK & PEARSON LLP
123 N. Wacker Drive, Suite 1800
Chicago, IL 60606-1770
joe.tilson@mbtlaw.com
anna.wermuth@mbtlaw.com
jeremy.glenn@mtblaw.com
alex.barbour@mbtlaw.com

Stephen Yokich
CORNFIELD AND FELDMAN LLP
25 E. Washington Street, Suite 1400
Chicago, IL 60602-1803
syokich@cornfieldandfeldman.com

/s/ Thomas P. Wolf
Thomas P. Wolf
MAYER BROWN LLP
Counsel for Amicus Curiae
The Big Ten Conference, Inc.

Exhibit A

BIG TEN CONFERENCE

HANDBOOK

2013-2014

University of Illinois

Indiana University

University of Iowa

University of Michigan

Michigan State University

University of Minnesota

University of Nebraska

Northwestern University

Ohio State University

Penn State University

Purdue University

University of Wisconsin

Until September 29, 2013:
The Big Ten Conference
1500 West Higgins Road
Park Ridge, Illinois 60068-6300
(847) 696-1010
Administrative Fax: (847) 696-1150
Communications Fax: (847) 696-1110

Effective September 30, 2013:
The Big Ten Conference
5440 Park Place
Rosemont, Illinois 60018
(847) 696-1010

Home Page: http://www.bigten.org

THE BIG TEN CONFERENCE
STATEMENT OF GUIDING PRINCIPLES
(Adopted 1991; Revised February 2001; Revised May 2007)

Preamble

The association of universities known as the Big Ten was founded in 1895. Member institutions, chiefly but not solely public, cherish a mission of research, graduate, professional and undergraduate teaching, and public service. They have accorded athletics an important place within that array of missions.

The historic title - The Intercollegiate Conference of Faculty Representatives - was significant, not least for its symbolic value, and that symbolism remains today: for the Big Ten has always asserted that it will excel in athletics without relinquishing or compromising the priority its member institutions assign to their academic standards and commitment to student academic success. To excel in both the academic and athletic realms requires a comprehensive and coherent set of shared practices which implement these values, while remaining flexible and responsive enough to accommodate the profound changes which American research universities have experienced in this century and continue to experience today. Such practices have been developed over the years by Big Ten institutions through the conference system of shared governance and they have served well to enable the Conference to meet its dual goals. The statement of guiding principles which follows codify these valued practices in a more permanent form.

ACADEMIC PRIORITY

1. PRINCIPLE: The Big Ten Conference recognizes the transcendent priority of a student-athlete's academic collegiate experience. It places its highest values upon high academic values. The student-athlete is student first, athlete second.

   GUIDELINES:

   A. The Conference will promote this concept nationally, while maintaining its own academic integrity by unilaterally establishing standards that may exceed those accepted nationally.

   B. The recruitment and admission of student-athletes must be consistent with those policies and practices established for all undergraduate students at each Conference member institution.

   C. Each Conference member institution must provide its enrolled student-athletes with viable and attainable opportunities for academic success.

revised 5/21/01, effective 8/1/0; editorial revision 4/02 to reflect adoption of NCAA 14.1.7.3.2; reaffirmed 7/13/04)

C. Branch or Extension Centers. Students attending a branch or extension center of a Conference university may not compete in intercollegiate athletics for the parent school. Also, a student in the parent school may not compete for one of its branches or extension centers.

14.1.9 CHANGE IN ELIGIBILITY STATUS – CONTINUING STUDENTS (Date of Attaining and Losing Academic Eligibility) Student-athletes shall become eligible or ineligible at the end of a term in accordance with NCAA 14.1.9, except as noted in Rule 14.1.9.1 for ineligibility due to suspension. *(Editorial revision 9/8/03)*

14.1.9.1 CHANGE IN ELIGIBILITY STATUS – SUSPENSION. A student-athlete who is suspended at any time for academic or non-academic reasons shall become immediately ineligible upon adjudication of the suspension, and shall not be eligible to compete until the first day of classes of the term in which the student-athlete is reinstated to the institution. *(Revised 12/14/92; 2/96; reaffirmed & editorially revised 5/17/03; 10/6/03; reaffirmed 7/13/04)*

A. Suspensions: Away-from-home competition. For situations in which the adjudication of the suspension occurs subsequent to the team's departure from campus, an institution may allow the student-athlete to remain at the site of the away-from-competition, provided the student-athlete no longer is engaged in practice or competition. If the suspension occurs prior to departure, the student-athlete shall not be permitted to travel with the team. *(Revised and effective 2/24/04)*

14.2 SEASONS OF COMPETITION. The provisions of NCAA 14.2 shall apply in determining seasons of competition and start of the five-year rule. (*Based on deregulation of former Rules 14.2.1.1(10/4/99) and 14.2.2 (5/11/92)).*

14.2.1.5 Eligibility Beyond Five Years - Extensions of the Five-Year Clock. A student-athlete's eligibility to compete through approved NCAA extensions of the five-year clock shall be subject to approval by institutional exception or petition (see Rule 14.7) *(Revised & effective 5/20/96; revised 5/24/99, effective 8/1/99; reaffirmed 7/13/04)*

14.2.4 Medical Hardship Waiver *(See also Rule 14.7 - Medical Hardship Waivers)*. In addition to the criteria established under NCAA Bylaw 14.2.4, a student-athlete shall not be eligible for a medical hardship waiver if the student-athlete, following the injury which prevented further competition in that season, competes unattached or while not representing the institution. An institution may, at its discretion, allow a student-athlete to dress in uniform after qualifying for a medical hardship waiver. *(Revised & effective 2/17/96)*

14.3 FRESHMAN ACADEMIC REQUIREMENTS

14.3.1 Eligibility During the Freshman Year. An entering freshman with no previous attendance, practice, or competition at a collegiate institution shall be eligible to participate and receive aid in accordance with NCAA legislation. In order for a freshman to compete during a term of the first academic year in residence at the certifying institution, the student-athlete must meet the following conditions. A freshman who does not meet these requirements at the end of a term shall be ineligible for the immediately following term, but may regain eligibility to compete in a subsequent term. (See 14.4.3.1.A and 14.4.3.3.A for eligibility at the beginning of the second year.) *(Reaffirmed and editorially revised 5/19/09)*

A. Completion of 12 units per term. The freshman student-athlete has completed a minimum full-time program of studies for each term enrolled during the freshman academic year (excluding summer session). Only courses that count towards full-time enrollment for which the student-athlete remained enrolled throughout the entire term and completed, regardless of grade earned, may be used to fulfill this requirement. *(Revised 5/24/99, effective 8/1/99; editorial revision 2/18/02; reaffirmed 7/13/04; 2/21/05)*

B. Minimum GPA requirement. See Rule 14.5.2.A for transfer student-athletes enrolling midyear of the first year of residence. *(Revised 10/5/10 & effective 8/1/11)*

14.3.2 Nonqualifier. A nonqualifier shall forfeit eligibility in all sports if individually coached or a member of any organized practice or training program for intercollegiate athletics prior to attaining eligibility for a first season of competition.

14.4 PROGRESS TOWARD DEGREE REQUIREMENTS

14.4.3 Eligibility for Competition. To be eligible for competition, a student-athlete must meet all NCAA progress requirements (Bylaw 14.4) as well as the following quantitative and qualitative requirements. Only student-athletes who are eligible to compete may dress in uniform for a game or contest. *(Reaffirmed 7/13/04; reaffirmed 710/06; revised 10/5/10 & effective 8/1/11*).

A. Progress Toward Degree - Quantitative and Qualitative Requirements (See Rules 14.4.3.1 and 14.4.3.3). A student-athlete shall be making progress toward fulfilling the requirements for the student's baccalaureate degree objective by earning a minimum cumulative number of degree credits and maintaining a specified cumulative grade point average based on the years in residence at a collegiate institution.

1. Year in Residence Defined. The year in residence shall be based on the date the student matriculated at any collegiate institution, and not the date of entry at the certifying Conference institution. The year in residence

shall be based on full-time enrollment and attendance during any portion of a term in an academic year in accordance with NCAA 14.4.3.1.1 *(Revised 5/24/99, effective 8/1/99*).

Effective 8/1/99, a year in residence is no longer based on part-time enrollment. Institutions may no longer use units earned from part-time coursework to meet Conference requirements unless the student-athlete is academically responsible for that term.

14.4.3.1 Fulfillment of Minimum Quantitative Requirements

A. **Minimum Degree Credits - Cumulative**. To be eligible to compete, a student-athlete shall fulfill the following minimum cumulative degree credits based on the student-athlete's year in residence at any collegiate institution during the first and at the start of the second year. Thereafter a student-athlete shall meet the percentage of degree requirements per NCAA 14.4.3.2 (40/60/80% for years 3 through 5). *(Reaffirmed 7/13/04; 2/21/05; reaffirmed 7/10/06; revised 7/14/09; effective for certifications beginning fall 2010; editorial revision 7/10; revised 10/5/10 & effective 8/1/11*)

1. During first year: Completion of 12 units per term during the freshman year to remain eligible for competition. (Refer to Rule 14.3.1)

2. At the start of the second year: Satisfactory completion of at least 24 semester/36 quarter units that count towards the degree, which must be earned at the certifying institution (transfer students excepted). *(Revised & effective 5-19-09)*

3. **Transfer Students.** See Rule 14.5.2.A for quantitative requirements for a transfer student-athlete entering during the first year or at the start of the second. *(Editorial revision 7/10).*

14.4.3.3 Fulfillment of Minimum Grade Point Average Requirements

A. **Minimum Grade-Point Average.** To be eligible to compete, a student-athlete shall present a cumulative minimum GPA percentage based on the institution's overall cumulative GPA required for graduation (based on a maximum 4.00) per NCAA 14.4.3.3. See Rule 14.5.2.A for minimum GPA requirements for transfers enrolling midyear of the first year of residence. *(Editorial revision 7/05; revised & effective 5/19/09; revised 10/5/10 & effective 8/1/11).*

B. **Grade Point Calculation - Basic Requirement and Computation of Grade Average (for all student-athletes**). The student-athlete must have the minimum cumulative grade average, computed on work taken up through the term immediately preceding the one for which eligibility is necessary. Effective 8/1/99, the grade point average shall be calculated on the basis of institutional policy for all students at that institution and in accordance with NCAA legislation,

except as follows: *(Revised 5/24/99; effective 8/1/99; reaffirmed 5/20/04)*

1. **Incompletes.** An "incomplete" or "condition" (including Incompletes or Conditions received in P/NP coursework) shall count as zero points until a different grade is recorded, but a course canceled or dropped without a grade, pursuant to university rules, shall not be counted. *(Revised & effective 2/18/95; reaffirmed 5/24/99; reaffirmed 7/13/04; reaffirmed 7/12/05)*

2. **Summer Coursework.** Grades obtained from summer coursework shall not be used to determine eligibility for competition during the freshman year (i.e., 1.65 requirement for midyear freshman transfers) – see Rule 14.5.2.A, but shall be used to compute the student's grade point average for future eligibility for competition. *(Reaffirmed 5/24/99; editorial revision 6/02; reaffirmed 10/8/02; reaffirmed 2/24/09; editorial revision 7/11)*

3. **Transfer Students (see Rule 14.5.2).** In computing the grade point average for immediate eligibility under this requirement, grades earned in all courses that would be transferable to the university shall be used, regardless of the grade earned, or the fact that such a grade is not sufficiently high for the course to be acceptable in transfer. Only the last grade earned in a course that has been repeated shall be included in the GPA calculation. *(Revised & effective 5/10/93; editorial revision 7/13/10)*

14.4.3.4: Rules for Administration of Progress Toward Degree Requirements

A. **Certification at Beginning of Term.** A student-athlete shall not become eligible for competition during a term if the student is not academically eligible on the first day of classes of that term except as follows *(reaffirmed 7/13/04; reaffirmed 7/12/05; also see Institutional Exceptions in Appendix B):*

1. **Completion of Coursework Prior to First Day of Classes – Administrative Delay**. The Faculty Representative and Registrar are authorized to waive this Rule in a case where the Faculty Representative has verified with the instructor that the student-athlete has definitely completed all course work prior to the opening day of classes, and the instructor has submitted the appropriate forms with the Registrar for a grade change or removal of an I grade, but, because of delays in completion of normal administrative procedures, the grade is not recorded officially until later. *(Revised & effective 5/18/98)*

2. **Late registration** is not a reason for ineligibility under this Rule.

3. **NCAA Eligibility Center delays for certifying freshman eligibility**. An incoming freshman may be eligible to compete the remainder of the term

if certified by the Eligibility Center within the first two weeks of classes. *(Adopted & effective 1/9/99)*

4. **Nonrecruited/nontendered.** Nonrecruited, nontendered student-athletes who walk on to a team after the first day of classes are not subject to this requirement. *(Editorially revised 2/21/00)*

5. **Correspondence/extension coursework** that is completed prior to the first day of classes of a term shall be considered when certifying eligibility as of the first day of classes. *(Revised 5/20/96; effective beginning Fall 1996)*

14.4.3.4.B. Making Up Scholastic Deficiencies

1. **Credit or Grade Average Deficiencies**. If a student fails to earn the minimum number of credits or fails to achieve the grade point average requirements to be eligible as of the first day of classes, eligibility may be reinstated at the beginning of any other regular term, based upon the student's fulfillment of the deficiency in accordance with the rules and practices of the university applicable generally to all students in the student's school, college or program, and in accordance with the provisions of Rule 14.9.

2. **Changing Grades and Records**. A change in a student's grade or records by administrative action, or by special procedures not available generally to all students for elimination of scholastic deficiencies, shall not make the student eligible, except where made to correct a provable error.

14.4.3.4.2 Advanced Placement Credit/Credit by Examination. Advanced placement credit obtained prior to enrollment and credit by examination may be used in determining eligibility in accordance with NCAA 14.4.3.4.2. Credits earned after the beginning of the term may be used without the need for petition. However, a student-athlete who is not certified by the first day of class would require approval by petition or institutional exception to become eligible. *(Revised 5/24/99, effective 8/1/99; editorial revision 7/13/10)*

14.5 TRANSFER STUDENTS

14.5.2 Requirements for Transfer. A student who is defined as a transfer shall be subject to the quantitative and qualitative progress requirements of Rules 14.4, and financial aid requirements of Rule 15 upon transfer to the certifying Conference institution. If a student does not meet these requirements, the student may become eligible when the requirements are met if otherwise eligible under NCAA legislation.

A. A transfer who enrolls midyear as a freshman (i.e., during the first year in residence) shall be eligible based on transferring at least 12 degree credits for

each term enrolled at the previous institution with a minimum 1.65 Conference GPA. A transfer that enrolls at the start of the second year shall be eligible based on transferring 24 semester/36 quarter units that count toward the degree with a cumulative minimum GPA (based on a maximum 4.000) that equals at least 90% of the institution's overall cumulative GPA required for graduation per NCAA Bylaw 14.4.3.3. (*Revised & effective 12/9/96; reaffirmed 7/13/04; Editorial revision 7/10*)

B. Intraconference Transfer. See Rule 15.01.5.A. *(Editorial revision 7/11).*

14.5.4 Two-Year College Transfers. For purposes of this Rule, a junior college is defined as any institution, university branch or extension center not having a regular four-year academic degree program.

A. Exception. A student who enrolls at a branch campus of the state of Pennsylvania commonwealth system is considered to be a junior college transfer if the student enrolls at any institution other than Penn State. *(Revised & effective 5/9/94)*

14.5.4.1 Qualifier or Nonqualifier. A qualifier or nonqualifier who has met the NCAA two-year college transfer requirements shall be eligible for competition and practice provided the quantitative and qualitative requirements of Rule 14.4 are met at the time of transfer. If these requirements are not met upon transfer, eligibility may be established when the quantitative and qualitative progress requirements are met. (Example: If a junior college transfer student is immediately eligible under the transfer rules, but does not meet the Conference progress requirements, the student may become immediately eligible when he or she meets the Conference progress requirements. However, if the junior college transfer student does not meet the transfer requirements upon transfer, the student must meet the one year residence and academic requirements for any transfer student.) *(Editorial revision 7/10; revised 10/5/10 & effective 8/1/11)*

14.6 OUTSIDE COMPETITION - Written Permission for Competition While Not Representing Institution (including exhibitions and clinics). (Also see Men's Agreement and Women's Agreement 17.02.9) To participate as an individual while not representing the institution during or between terms during the regular academic year, a student-athlete must obtain prior written approval from the Director of Athletics, Senior Woman Administrator, or designee (who shall not be members of the coaching staff) and Faculty Representative prior to practicing or competing for the event. The Faculty Representative shall be the last signatory on the written approval. Violations that are a result of an institution's failure to properly administer or inform the student-athlete of this requirement shall not affect the individual student-athlete's eligibility, but shall be reported as an institutional violation to the Conference office. A student-athlete who participates after being denied permission shall become immediately ineligible. *(Revised & effective 5/24/99; revised & effective 7/15/09)*

RULES OF FINANCIAL AID

RULE 15. FINANCIAL AID

15.01 GENERAL PRINCIPLES

15.01.5.A. Intraconference Transfer Rules. *(Adopted 10/5/10 and effective for tenders of financial aid signed for 2011-12 and beyond).*

1. Pre-Matriculation. A prospective student-athlete who has signed a tender from a Conference institution and has not yet triggered transfer status per NCAA Bylaw 14.5.2 (conditions affecting transfer status), is subject to the following intraconference transfer requirements:

a. Signed National Letter of Intent. A prospective student-athlete who signs a valid National Letter of Intent (NLI) with a Conference institution but subsequently enrolls at an alternate Big Ten institution shall be required to complete one (1) full year of residence at the alternate (i.e., certifying) Big Ten institution and shall be charged with the loss of one (1) season of eligibility in all sports. These penalties shall be applied regardless of any decision made by the NLI Steering Committee on behalf of the prospective student-athlete.

1. Exception – Complete Release by Signing Institution. If the Big Ten institution at which the prospective student-athlete originally signed the NLI grants a "Complete Release" from the NLI, the prospect shall be permitted to enroll at any other Conference institution without penalty.

2. Exception – NLI Declared Null and Void. Should the NLI become null and void prior to the prospective student-athlete's matriculation, the prospective student-athlete shall be free to enroll at any other Conference institution without penalty.

b. Signed Tender without National Letter of Intent. A prospective student-athlete that signs a valid tender with a Conference institution but subsequently enrolls at an alternate Big Ten institution shall be required to complete one (1) full academic year of residence at the alternate (i.e., certifying) Big Ten institution and shall be charged with the loss of one (1)

15.5 MAXIMUM INSTITUTIONAL GRANT-IN-AID LIMITATIONS BY SPORT.

15.5.1.3 Medical Exemption for Counter with Injury or Illness. A tender awarded to a student-athlete may be exempted from the financial aid limitations if the student-athlete becomes injured or ill to the point the player will never be able to compete in intercollegiate athletics. This exemption requires approval by petition and shall include a Medical Statement approved by the head team physician; See Rule 14.7 for petition procedures. *(Reinstated 8/1/92 for exemptions to institutional financial aid limitations beginning with 1992-93; reaffirmed 2/19/07; editorial revision 8/13).*

A. Change in Medical Condition. If circumstances change and the student-athlete becomes physically able to practice or compete at the institution at which the incapacitating injury or illness occurred, a student-athlete shall not be eligible to participate unless a new petition is approved. If this petition is approved, the student-athlete shall become a counter and shall count against the sport during each academic year aid was previously awarded. Any waivers of this computation must be approved by the NCAA Legislative Council Subcommittee for Legislative Relief. *(Editorial revision per change in NCAA 15.5.1.3.2, effective 8/1/01; editorial revision 7/10)*

15.5.1.10 Limitations on Institutional Offers of Aid. An institution shall not at any time issue a tender to a prospective student which, if accepted, would exceed the maximum number of grants-in-aid allowed under the limits of NCAA Bylaw 15.5. *(Revised 5/11/92)*

A. Exception for Football. An institution may have no more than 3 initial offers in excess of its institutional limit outstanding at any time. *(Adopted and effective 10/8/02)*

B. Exception for Men's Basketball. An institution may have no more than 1 initial offer in excess of its institutional limit outstanding at any time. *(Adopted 6/19/07; revised 7/25/07; revised 7/13/10; revised 7/12/11)*

C. Exception for Baseball. At any given time, an institution may offer up to the value of one two equivalencies in excess of its institutional limit which may be divided among no more than two student-athletes. *(Adopted 10/6/09 effective beginning with initial offers issued during the 2009-10 NLI signing periods; revised 5/14/13 & effective for initial offers issued during the 2013-14 NLI signing periods).*

D. Administration of Exceptions - Reporting Requirements. Institutions shall notify the Conference office of its intention to use any of the exceptions. The Conference office shall monitor compliance with these exceptions, and identify those institutions that shall be required to submit a report, on a form provided the Conference office, to account for any oversignings, as well as any reduction, non-renewal, or cancellation of athletic grants-in-aid for continuing student-athletes in

that program. This information will be made available for review by the Faculty Representatives and the Joint Group. *(Revised 7/13/10)*

15.5.11 Sources of Funds and Expenditures and NCAA Squad Lists

A. Aid Limited to Basic Costs of Education - Sources of Funds and Expenditure. To comply with NCAA financial aid legislation, each institution shall file with the Commissioner:

1. Statement of Costs. The statement shall include the basic costs of attending that institution for a period of one academic year, and for a summer session (i.e., the cost of tuition and/or fees, room, board, and use of books). The statement shall be filed with the Commissioner by November 1 of the subsequent year, and shall be available for examination by all member institutions.

B. NCAA Squad List – Year-End Report. Each institution shall submit to the Conference office a final copy of the NCAA Squad List for each sport no later than August 1 (or prior to the first date of competition if used to certify eligibility) of each year for financial aid awarded that previous academic year. Effective beginning summer 2000, it is no longer required to submit a summer session addendum for summer aid. *(Revised & effective 2/21/00)*

AGREEMENT 16. BENEFITS AND EXPENSES FOR ENROLLED STUDENT-ATHLETES

(Note: See Rule 19.5.C for violations of Agreement 16)

16.2 COMPLIMENTARY ADMISSIONS AND TICKET BENEFITS

16.2.1 Complimentary Admissions Procedures. A complimentary admission is defined as a free of service charge admission issued by a university for a particular event. The provisions of NCAA Bylaw 16.2 shall govern complimentary admissions benefits to student-athletes except as those noted in this section. (For information on general ticket policies, see Agreement 17.1.D.)

16.2.1.1 For Contests in Student-Athlete's Sport.

A. Home Contests. A varsity squad member may be admitted free to any home varsity game in the student-athlete's sport regardless of whether the student-athlete is in a game uniform. *(Revised 2/25/92, effective 8/1/92)*

1. Complimentary admissions may be provided to visiting universities' squad members in non-revenue sports (i.e., sports other than football and basketball) without charge. *(Revised and effective 2/21/05)*

2. Each university may issue complimentary admissions to coaching personnel and their families, administrative personnel, selected clerical personnel, retirees and other categories to be determined by the Director of Athletics. This policy shall be governed by each university. However, the university shall adhere to the policy relative to financial settlements for these complimentary admissions.

B. Away-from-Home Contests – Football and Men's Basketball. Complimentary admissions may be issued only to team members who are on the travel squad for football and men's basketball. See Agreement 17.1.D for additional ticket policies and visiting team allotments for all sports. (*Editorial revision 7/11/07)*

C. Conference Championships. The Conference or host institution shall not issue complimentary or any other form of free admission to any competitor in a Conference championship. Championship management, press personnel with credentials, and the participants shall be admitted without charge. An institution may purchase admissions that may be used by student-athletes consistent with Big Ten and NCAA legislation.

16.2.1.3 For Contests Other Than Student-Athlete's Sport

A. Home Contests in Other Sports. A student-athlete may receive a complimentary admission to all regular-season home athletic events as long as tickets are available, except in football, men's basketball, and men's ice hockey. *(Revised & effective 7/27/00; reaffirmed 5/20/09)*

1. Exceptions. Student-athletes who are not participants in football, men's basketball, or men's ice hockey may receive a complimentary admission for those sports under the following circumstances *(Revised & effective 7/27/00):*

a. For the purpose of hosting a prospect on an official or unofficial visit. *(Updated 9/92; revised 10/1/12 & effective 8/1/13)*

b. For the purpose of being recognized or honored at the contest and it is the institution's policy to provide complimentary admission to any student of the university for this purpose. A student-athlete may also receive a maximum of four additional complimentary admissions to be used by the student-athlete's parents, legal guardians and/or spouse as permitted under NCAA legislation. *(Updated 4/93; revised & effective 10/17/00; revised 2/19/07, effective 8/1/07)*

2. Exception – Women's Basketball. Women's basketball student-athletes may receive complimentary admission to home men's basketball contests. *(Effective 8/1/10)*

B. Away-from-Home Contests – Non-Participating Visiting Team. Upon request, the host institution shall arrange for a visiting institution to provide complimentary admissions to its student-athletes for entertainment purposes as permitted under NCAA legislation for away-from-home contests in events other than football, men's basketball, and men's ice hockey, provided the event is not sold out. *(Revised and effective 1/9/99; revised & effective 7/27/00; editorial revision 7/06)*

16.4 MEDICAL EXAMINATIONS.

16.4.1 Medical Examinations. Each student-athlete shall have an initial physical examination when they enter a Conference intercollegiate sports program. The extent of the physical examination including laboratory studies and other diagnostic procedures will be determined by each team physician. Thereafter, an annual review of their health status shall be performed. This may include a physical examination at the discretion of the team physician. *(Reaffirmed 2/19/07)*

A. The final decision on physical qualification or reason for rejection shall be the responsibility of the team physician.

B. The team physician shall have final authority regarding participation in practice and competition subsequent to an injury or illness.

16.5 TRAINING TABLE MEALS

16.5.2. **Permissible.** Training table meals are considered an element of financial aid. The provisions of NCAA Bylaw 15.2 and NCAA Bylaw 16.5 shall govern housing and meal benefits except as those noted below. *(Editorial revision 7/06)*

A. Training Table Meals - General Interpretations and Definitions for Football and Men's Basketball

1. Coaches shall not give instruction in the sport during the meal.

2. The term meal is defined as a meal for a group taken together, so that the food is of proper kind, quantity, and quality and properly served. It is not permissible to reimburse players or to compensate those furnishing meals eaten elsewhere when a training table meal is offered or the institution's dining facilities are available, and the student-athlete chooses to eat elsewhere. *(Revised 10/91)*

3. The full cost of the meal shall be defined as the actual cost to provide that meal, regardless of the source of funds.

4. Men's Basketball. An institution may furnish a meal seven days a week during the season (including any postseason participation) and five days a week out of season during the remainder of the academic year *(Updated 8/92; 8/93; 8/94; revised 5/19/97, effective 8/1/97; reaffirmed 10/4/06)*

16.8 TRAVEL SQUAD SIZE LIMITS AND OFFICIAL PARTY

16.8.1 Competition While Representing Institution.

A. Home and Travel Squad Limits. Only student-athletes who are eligible to compete may dress in uniform for a game or contest. *(Updated 9/92; revised & effective 1/9/99)*

1. Squad Size Limitations. The following home and travel squad limits shall apply to all regular season (championship and non-championship segments) competition including exhibition, scrimmages, Conference championships, and Conference postseason tournaments (**See Chart 16.8.1 for men's and women's sports)**. *(Revised & effective 1/21/92; updated 9/92; editorial revision 7/04)*

a. Squad Size Limits - Split Sites. When an institution has split squads at two different sites on the same date, the travel squad at both sites together may not exceed the total number allowed for that sport.

APPENDIX F
BIG TEN CONFERENCE
DRUG TESTING POLICIES AND PROCEDURES

(Adopted 4/14/07; effective 8/1/07; effective 8/1/09)

1.0 MEDICAL CODE

1.1 The presence in a student-athlete's urine of a substance and/or metabolite of such substance belonging to a class of substances currently banned by the National Collegiate Athletic Association ("NCAA") or the Big Ten Conference ("Big Ten") other than a "street drug" may be cause for loss of eligibility.

1.2 Evidence of presence of a banned substance and/or metabolite will be determined from analysis of a student-athlete's urine and confirmation by analytical testing methods approved by the Big Ten (i.e., gas chromatography/mass spectrometry, liquid chromatography, isotope ratio mass spectrometry, or other methods deemed appropriate to confirm the presence of a banned substance and/or metabolite) in a laboratory designated by the Big Ten.

1.3 The Big Ten Conference has adopted the NCAA List of Banned-Drug Classes, with the exception of "street drugs" (which are not tested by the Big Ten Conference but may be tested by the NCAA and/or individual institutions). The current NCAA List of Banned-Drug Classes can be found on the NCAA website www.ncaa.org (Academics and Athletes/Health and Safety/Drug Testing links).

2.0 ORGANIZATION

2.1 These procedures are developed pursuant to Rule 2.3 of the Rules of Organization and Procedures of the Big Ten Conference.

2.2 The Drug Testing Review Subcommittee ("Subcommittee") of the Academics, Compliance and Eligibility Committee will review the procedures of the Big Ten drug-testing program on an annual basis.

2.3 The Big Ten staff will support, coordinate and be responsible for the general administration of the drug-testing program. The Big Ten staff may contract with an outside agency to assist in the administration of the program including, but not limited to, specimen collection and laboratory testing services. For 2013-2014, The National Center for Drug Free Sport ("Drug Free Sport") will assist the Big Ten in the administration of the drug-testing program.

2.4 The host institution for a Big Ten championship or tournament, including events that are conducted at a neutral site, will designate an individual to serve as drug-testing site coordinator for the event. The site coordinator must be an individual that has a reporting

line external to a coaching staff member and he/she may not have any coaching-related responsibilities. In addition, the site coordinator must be on site at all times during the championship. In any sport that hosts a championship at a neutral site, the Big Ten drug testing liaison ("Big Ten liaison") will be responsible for designating a site coordinator. *(Editorial revision 7/09)*

2.5 All institutions are required to designate a site coordinator for year-round drug testing (hereinafter "nonchampionship testing"). The site coordinator must be an individual that has a reporting line external to a coaching staff member and he/she may not have any coaching-related responsibilities.

2.6 The Big Ten Commissioner or his/her designee will approve any contracts between the Big Ten and outside drug-testing agencies and/or laboratories. In addition, any drug-testing laboratory with which the Big Ten contracts will be required to demonstrate, to the satisfaction of the Big Ten Commissioner or his/her designee, proficiency in detection and confirmation of the banned-substance categories on the Big Ten list of banned-drug classes.

3.0 CAUSES FOR LOSS OF ELIGIBILITY

3.1 Each academic year, each Big Ten student-athlete shall sign a form in which he or she consents to be tested for the use of substances prohibited by the Big Ten list of banned-drug classes in Section 1.3. A student-athlete must complete and sign the consent form prior to being eligible for any participation (i.e., practice or competition) in a given academic year. Failure to complete and sign the consent form prior to practice or competition (whichever occurs earlier) shall result in the student-athlete's ineligibility for participation (i.e., practice or competition) in all intercollegiate athletics. *(Editorial revision 7/09)*

3.1.1 The institution shall administer the consent form individually to each student-athlete (including walk-ons) each academic year.

3.1.2 Violations of this procedure do not impact a student-athlete's eligibility provided the violation occurred due to institutional administrative error or oversight and the student-athlete subsequently completes the form. However, the violation shall be considered an institutional violation per Conference Rule 14.9.D.

3.2 All student-athletes found to test positive for a substance belonging to a banned-drug class are subject to loss of eligibility.

3.3 A student-athlete who refuses to sign the Student-Athlete Notification Form or the Drug-Testing Chain of Custody Form, fails to arrive at the collection station at the designated time without adequate justification, leaves the collection station before providing a specimen according to protocol, attempts to alter the integrity or validity of the urine specimen and/or collection process, or fails to provide a urine specimen according to

protocol will be deemed to have tested positive for a banned substance. Additional causes for loss of eligibility may be found in Section 6.3.

3.4 Any individual employed by the intercollegiate athletics program that has knowledge of a student-athlete's use of a substance on the list of banned drug classes shall follow institutional procedures for reporting his or her knowledge of such use.

4.0 CHAMPIONSHIP AND STUDENT-ATHLETE SELECTION

4.1 The method for selecting championships at which testing will occur and the method for selecting student-athletes to be tested (for both championship and nonchampionship testing) will be evaluated on a year-to-year basis to determine if the current protocol is appropriate for the program. If it is determined that excessive or insufficient testing occurred or if there are significant logistical problems, the DTRS may modify (1) the numbers of tests conducted at any championship; and (2) associated sports-specific selection procedures used to define the number of tests. The process will be approved in advance of the testing occasion by the Big Ten Commissioner or his/her designee. *(Editorial revision 5/15/08)*

4.2 At Big Ten individual championships and tournaments, the selection of student-athletes may be based on any combination of Big Ten-approved random selection and/or position of finish. Crew chiefs will be notified which method or combination of methods the Big Ten Commissioner or his/her designee has approved.

4.3 At Big Ten team championships and tournaments, student-athletes may be selected on the basis of any combination of playing time, position, and/or Big Ten-approved random selection. Crew chiefs will be notified which method or combination of methods the Big Ten Commissioner or his/her designee has approved.

4.4 All student-athletes shall be subject to year-round drug testing, including testing during the summer vacation period and vacation periods during the academic year. For nonchampionship testing, student-athletes may be selected on the basis of any combination of position, playing time, athletics financial aid status, and/or Big Ten-approved random selection. Crew chiefs will be notified which method or combination of methods the Big Ten Commissioner or his/her designee has approved.

4.4.1 Student-athletes will be selected from the official institutional squad list by the Big Ten or its authorized agent.

4.4.1.1 Students that have exhausted their intercollegiate eligibility or have career-ending injuries will not be selected for testing by the Big Ten. A multiple-sport athlete would be eligible for selection if he/she has eligibility remaining in any of the sports.

4.5 In addition to the criteria set forth above, the Big Ten will have the authority to select a student-athlete for one or more follow-up tests under the following circumstances: (1)

student-athlete has previously tested positive (as defined in Sections 3.3 or 6.3) during a Big Ten Conference test; (2) student-athlete has a testosterone/epitestosterone ratio of great than 6:1; (3) student-athlete provides three or more dilute samples during a single test; (4) laboratory reports that sample was contaminated/ degraded in some manner such that it is inadequate for testing; (5) laboratory reports a finding of no endogenous steroids, unusually low endogenous steroids, or another unusual finding that could be a result of either a student-athlete's use of a banned substance or an attempt to mask the use of a banned substance; (6) objectively suspicious behavior documented by the testing crew (e.g., student-athlete significantly late to test, student-athlete spilled beaker during test. In circumstances (2) through (6) above, any selection of an individual student-athlete for follow-up testing will be based on recommendations from either the collection crew, the testing agency, or the laboratory that tests the specimen (i.e., UCLA Laboratory). *(Revised & effective 10/16/08; updated 7/09)*

4.6 In addition to the selection criteria set forth above, persons who test positive for a banned substance and subsequently have their eligibility restored will automatically be tested at any subsequent Big Ten championship or tournament at which they appear and at which testing is being conducted. The student-athlete is also subject to drug testing during the period of their suspension. *(Editorial revision 7/09)*

4.6.1 It is the responsibility of the institution to notify the drug-testing crew chief that a student-athlete who is present must be tested to satisfy the retesting requirement outlined in section 4.6.

4.7 Student-athletes may be tested at any time before, during, or after Big Ten championships and throughout the calendar year (including vacation periods and summer).

5.0 NOTIFICATION

5.1 Tournament directors and drug-testing site coordinators for Big Ten championships and tournaments will be notified of the drug-testing plan not more than seven calendar days prior to the day of testing.

5.2 For nonchampionship testing, the site coordinator will be notified not more than two calendar days prior to the day of testing.

5.3 Team events. At Big Ten team championship events, a student-athlete selected for drug testing will be handed a Student-Athlete Notification Form by a designated official. The Notification Form will instruct the student-athlete to report to the collection station within one hour, unless otherwise directed by the crew chief or designee. An official representative of the student-athlete's institution must be in the collection station during any testing – including next-morning testing – to certify the identity of any student-athletes being tested. The official representative of the student-athlete's institution must remain in the collection station at all times during the testing. *(Editorial revision 7/09)*

5.3.1 At Big Ten team championship and tournament events, when competition begins at 10 p.m. or later local time, student-athletes will be notified according to section 5.3. The institution will have the option of deferring testing until the following morning. This decision as to whether to defer testing must be made on a team-by-team (as opposed to student-athlete by student-athlete) basis.

5.3.1.1 Determination of the time of testing (i.e., post-contest or the following morning) will be established by the institution no later than immediately following the contest. In the event that the institution elects to conduct testing the following morning, the institutional representative and the crew chief will be responsible for establishing a collection site for any next-morning tests. The site coordinator shall make the host's facility available for any next-morning tests, if necessary. If testing occurs the following morning, testing shall begin prior to 10 a.m. *(Updated 7/09)*

5.3.1.2 Exception: If testing is conducted after final rounds at team championships, both teams will be tested after the contest.

5.4 Individual events. At Big Ten individual championship events, a student-athlete will be handed a Student-Athlete Notification Form by an official courier. The Notification Form will instruct the student-athlete to accompany the courier to the collection station within one hour, unless otherwise directed by the crew chief or designee.

5.4.1 If the selected student-athlete is scheduled to compete in another event during that day's championship, the student-athlete may defer testing until the completion of his/her final event that session/day.

5.4.1.1 In order to defer testing until completion of the student-athlete's final event that session/day, the courier and selected student-athlete will be required to obtain an official institutional representative's signature on the Notification Form.

5.4.1.2 If testing is deferred under this provision, the institutional representative must present the student-athlete to the collection station no later than one hour after completion of his/her final event and must certify the identity of the student-athlete.

5.4.1.3 If testing is deferred under this provision, the Big Ten may require personal observation of the student-athlete until the time of collection.

5.5 The designated official (team event) or courier (individual event) will record the time of notification and the Notification Form will be read and signed by the student-athlete.

5.5.1 Upon returning to the collection station, the designated official or courier will give the crew chief (or his/her designee) the signed Notification Form. The

student-athlete and site coordinator will be given a copy of the testing process form at the completion of the collection process.

5.6 A witness may accompany a student-athlete to the collection station. The witness will be asked to remain during the entire collection process.

5.7 For Big Ten nonchampionship testing, the student-athlete will be notified of and scheduled for testing by the institution. Notification shall be in-person or by direct telephone contact (e.g., not solely by e-mail, voicemail, or other methods of indirect contact). The institution will notify the student-athlete of the date and time to report to the collection station and will have the student-athlete read and sign any Student-Athlete Notification Form.

5.7.1 An institutional and/or Big Ten representative must be in the collection station at all times during nonchampionship testing. The representative will certify the identity of student-athletes and will be responsible for security of the collection station and for student-athlete compliance with the collection protocol. Student-athletes shall provide identification when entering the drug-testing station. Picture identification is preferred but not required.

5.8 At selected championships and nonchampionship testing, alternative methods of student-athlete notification may be used, subject to the limitations in Section 5.7.

6.0 SPECIMEN-COLLECTION PROCEDURES

6.1 Only those persons authorized by the crew chief will be allowed in the collection station.

6.1.1 The crew chief may release a sick or injured student-athlete from the collection station or may release a student-athlete to return to competition or to meet academic obligations only after appropriate arrangements for having the student-athlete tested have been made and documented.

6.2 Upon entering the collection station, the student-athlete will be identified by the crew chief or a designee who will record time of arrival and name.

6.2.1 The student-athlete will provide the crew chief or a designee with the Student-Athlete Notification Form.

6.2.2 When ready to provide a urine sample, the student-athlete will select a sealed specimen beaker.

6.2.3 A crew member will monitor the furnishing of the specimen by observation in order to ensure the integrity of the specimen. At least 85 mL of specimen must be provided by the student-athlete.

6.2.4 Fluids given to student-athletes who have difficulty providing a sample must be from sealed containers (certified by the crew chief) that are opened and consumed in the station. These fluids must be caffeine- and alcohol-free and free of any other banned substances.

6.2.4.1 Drug-testing crews will not provide food to student-athletes. Student-athletes or their institutions may supply food subject to the approval of the crew chief.

6.2.5 If the specimen is incomplete, the student-athlete must remain in the collection station under observation of a crew member until the sample is collected. During this period, the student-athlete is responsible for keeping the collection beaker closed and controlled.

6.2.6 Once a specimen of at least 85 mL is provided, the crew member who monitored the furnishing of the specimen by observation will sign that the specimen was directly validated.

6.2.6.1 The crew member will check the specific gravity and pH of the specimen. The specific gravity and pH shall be recorded. If the urine has a specific gravity below 1.005 or has a pH outside of the range 4.5-7.5, or any other abnormalities are observed, they will be documented and the student-athlete will be required to remain in the station until an adequate specimen is provided

6.2.6.2 Once a specimen has been provided that meets the on-site specific gravity and pH parameters and it has been recorded by the crew member, the student-athlete will select a specimen collection kit and a uniquely numbered set of bar codes from a supply of such.

6.2.6.3 The crew member will pour approximately 60 mL of the specimen into the "A vial" and the remaining amount into the "B vial" in the presence of the student-athlete.

6.2.6.4 The crew member will place the cap on each vial in the presence of the student-athlete; the crew member will then seal each vial in the required manner under the observation of the student-athlete and witness (if present). Vials and forms (if any) sent to the laboratory shall not contain any identifying information of the student-athlete (e.g., name).

6.2.7 The student-athlete will select a new specimen-collection beaker for each specimen collected.

6.2.8 The laboratory will make the final determination of specimen adequacy. If the laboratory determines that a student-athlete's specimen is inadequate for analysis,

at the discretion of the Commissioner or his/her designee, another specimen may be collected.

6.2.8.1 The student-athlete, crew member and witness (if present) will certify that the procedures were followed as described in the protocol. Any deviation from the procedures must be described and recorded at that time. If deviations are alleged, the student-athlete will be required to provide another adequate specimen.

6.3 A student-athlete who refuses to sign the Student-Athlete Notification Form or the Drug-Testing Chain of Custody Form, fails to arrive at the collection station at the designated time without adequate justification, leaves the collection station before providing a specimen according to protocol, attempts to alter the integrity or validity of the urine specimen and/or collection process, or fails to provide a urine specimen according to protocol is cause for the same action(s) as evidence of use of a banned substance. The crew chief will inform the student-athlete of these implications (in presence of witnesses) and record such. If the student-athlete is not available, the crew chief will notify the institutional representative or the Big Ten official responsible for administration of the event. The student-athlete will be considered to have withdrawn consent and will be ineligible on that basis.

6.4 All sealed specimens will be secured in a shipping case. The crew member will prepare the case for forwarding.

6.5 After the collection has been completed, the specimens will be forwarded to the laboratory, and all copies of all forms forwarded to the designated persons. The specimens become the property of the Big Ten.

7.0 CHAIN OF CUSTODY

7.1 A Big Ten forwarder's agent will receive the shipping case(s) and deliver the case(s) to the air carrier.

7.2 A laboratory employee will record that the shipping case(s) have been received from the carrier.

7.3 The laboratory will record whether the numbered bar-code seal on each vial arrived intact.

7.3.1 If a specimen arrives at the laboratory with security seals not intact, at the discretion of the Commissioner or his/her designee, another specimen may be collected.

8.0 NOTIFICATION OF RESULTS AND APPEAL PROCESS

8.1 The laboratory will use a portion of Specimen A for its initial analysis.

8.1.1 Analysis will consist of sample preparation, instrument analysis and data interpretation.

8.1.2 The laboratory director or designated certifying scientist will review all results showing a banned substance and/or metabolite(s) in Specimen A.

8.1.3 The laboratory will inform Drug Free Sport of results by each respective code number.

8.2 Upon receipt of the results, Drug Free Sport will identify any specimens with positive findings and inform the Big Ten liaison and institution as follows:

8.2.1 For Big Ten championships, only positive test results will be reported to the Big Ten. Positive results should be made available within approximately 30 days of the collection.

8.2.2 For student-athletes who have a positive finding, Drug Free Sport will notify the Director of Athletics or a designee of the finding by telephone as soon as possible. The telephone contact will be followed by "overnight/signature required" letters (marked "confidential") to the chief executive officer and the Director of Athletics. The institution shall notify the student-athlete of the finding.

8.2.2.1 Drug Free Sport will, during the telephone conversation, advise the Director of Athletics that Specimen B will be tested. The student-athlete may be present at the opening of Specimen B.

8.2.2.2 The institution and/or the student-athlete will be given the option to be represented at the laboratory for the opening of Specimen B. Notification by the institution and/or the student-athlete of intent to be represented must be given to the Big Ten liaison.

8.2.2.3 If the institution and/or the student-athlete desire representation but cannot arrange for such representation in 48 hours, Drug Free Sport will arrange for a surrogate to attend the opening of Specimen B. The surrogate will not otherwise be involved with the analysis of the specimen.

8.2.2.4 The student-athlete, the student-athlete's representative, and the institution's representative or the surrogate will attest by signature as to the code number on the bottle of Specimen B, that the security seal has not been broken, and that there is no evidence of tampering.

8.2.2.5 Sample preparation for Specimen B analysis will be conducted by a laboratory staff member other than the individual who prepared the student-athlete's Specimen A.

8.2.2.6 Specimen B findings will be final, subject to the results of any appeal. The laboratory will inform Drug Free Sport of the results. Drug Free Sport will inform the Big Ten liaison of the Specimen B finding.

8.2.2.7 The institution shall immediately notify the student-athlete of the positive test and of the right to appeal. A positive finding may be appealed by the institution to the Drug Testing Review Subcommittee ("Subcommittee") by written notification of its intention to appeal. Upon notification of the Specimen B positive finding, the institution shall be required to declare the student-athlete ineligible and shall be obligated to withhold the student-athlete from additional intercollegiate competition. In the event that a student-athlete tests positive for a substance for which the institution desires a medical exception, the eligibility of the involved student-athlete will be maintained during the period of time the exception is being reviewed by the Subcommittee.

8.2.2.7.1 The institution shall appeal if so requested by the student-athlete. The student-athlete may not appeal independently of the institution. *(Editorial revision 7/09)*

8.2.2.7.2 Such an appeal will be conducted by telephone conference with the student-athlete and the institution's athletic administrator required to participate therein. It is recommended that the head coach or a designee participate in the appeal. The student-athlete may have others available to participate on the call on his/her behalf.

8.2.2.7.3 A minimum of 5 members of the Subcommittee must be available to hear an appeal of a positive finding. (*Revised & effective 5/15/08)*

8.2.2.7.4 Copies of reports from the laboratory that contain results from the A Specimen and B Specimen will be forwarded to the Director of Athletics before the appeal call.

8.2.2.7.5 A technical expert may serve as a consultant to the Subcommittee in connection with such appeals.

8.2.2.7.6 The crew chief may serve as a consultant to the Subcommittee in appeal phone calls involving matters of collection protocol.

8.2.2.7.7 Prior to the appeal call, the institution shall provide the basis of its appeal in writing to the Subcommittee. In addition, the institution shall be required to submit to the Subcommittee a written summary (no more than 2 pages) describing the institution's drug-education policy and practices, which were

operational and applicable to the student-athlete for whom an appeal is being made. (*Revised & effective 5/15/08)*

8.2.2.8 Medical Exception. In the event that a student-athlete tests positive for a substance for which the institution desires a medical exception, the eligibility of the involved student-athlete will be maintained during the period of time the exception is being reviewed by the Subcommittee (See Appendix F-1 for complete Medical Exception Policies and Procedures). *(Revised & effective 5/15/08)*

8.2.2.8.1 Review of requests for medical exceptions will be conducted by a three-person panel consisting of the Subcommittee's two team physicians and the Subcommittee's chair.

8.2.2.8.2 In the event that all three individuals vote on the medical exception request, two affirmative votes are required to grant the exception request.

8.2.2.8.3 In the event that only two individuals vote on the medical exception request (e.g., due to recusal or unavailability), two affirmative votes are required to grant the exception request.

8.2.2.8.4 If only two individuals vote on the exception request and a one-to-one vote occurs; the request shall be forwarded to the full Subcommittee for review and vote. In this instance, affirmative votes from a majority of voting Subcommittee members shall be required to grant the request.

8.2.2.8.5 In the event that the medical exception request is not granted, the institution may appeal the denial to the full Drug Testing Review Subcommittee using the procedures outlined in Section 8.2.2.7.

8.3 The Big Ten office will notify the institution's chief executive officer and Director of Athletics of the findings and the result of any appeal to the Subcommittee. This notification will be initiated by telephone to the Director of Athletics. This will be followed by another "overnight/signature-required" letter (marked "confidential") to the chief executive officer and the Director of Athletics. It is the institution's responsibility to inform the student-athlete.

8.4 The Big Ten Joint Group, at the request of a member institution, shall have the authority to review and modify the action of the Subcommittee. Any review and modification shall be in accordance with Conference policy. (See Rules 32.10, 32.11)

8.5 The following is a recommended statement concerning a positive test which results in a student-athlete's ineligibility. If inquiries are received, this statement could be released: "The student-athlete in question violated Big Ten eligibility rules and has been declared ineligible."

8.6 The Big Ten, its agents, and the institution of the involved student-athlete shall maintain strict confidentiality with regard to information related to a positive test and appeal thereof pending final resolution.

9.0 SANCTIONS FOR USE OF BANNED SUBSTANCES

9.1 A student-athlete who tests positive for the use of a banned substance (as defined in Section 1.3) shall be declared ineligible to represent a Big Ten institution in intercollegiate competition during the time period ending one calendar year after the date of the student-athlete's positive drug test, and shall be charged with the loss of a minimum of one season of competition in all sports if the season of competition has not yet begun for that student-athlete or a minimum of the equivalent of one season of competition in all sports if the student-athlete tests positive during his or her season of competition. In addition, the student-athlete's institution shall impose an educational and/or counseling requirement on the student-athlete.

9.2 A student-athlete who tests positive on a second occasion for the use of a banned substance (as defined in Section 1.3) shall be declared permanently ineligible for all further intercollegiate competition in all sports. In addition, the student-athlete's institution shall impose an educational and/or counseling requirement on the student-athlete.

9.3 Team eligibility sanctions (e.g., contest forfeiture) may be imposed in the event that the institution, after having been notified of a positive test in accordance with Section 8.2.2, knowingly permits a student-athlete to compete.

10 RESTORATION OF ELIGIBILITY

10.1 Student-athletes must fulfill any reinstatement conditions and will be drug tested by the Big Ten in order to be considered for restoration of eligibility. *(Editorial revision 6/08)*

10.2 Student-athletes who are ruled ineligible as a result of a Big Ten positive drug test will be subject to testing by the Big Ten at any time during their period of ineligibility. In addition, these student-athletes will be subject to a mandatory Big Ten exit test no sooner than the 11th month of their minimum one-year period of ineligibility, with the results of the retests provided to the Subcommittee. If a lesser sanction is imposed, the exit test may occur sooner. *(Editorial revision 7/09)*

10.2.1 Institutional requests for exit ~~re~~testing should be submitted to the Big Ten drug testing liaison. The Big Ten drug testing liaison will contact Drug Free Sport to schedule the exit test with the institution. The Big Ten drug testing liaison shall

determine the date the student-athlete will be retested. Requests for restoration of a student-athlete's eligibility shall be submitted to the Subcommittee. Requests for restoration of eligibility will not be considered until after the student-athlete submits to the mandatory exit test, tests negative, and the Subcommittee has received the negative result.

10.2.2 Retests for restoration of eligibility are conducted by the Big Ten at the institution's expense.