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***Wisne v. NCAA* Injunction Creates Chaos in College Athletics**

On June 23, weeks after the 2025-26 academic year had concluded, the NCAA Division I Cabinet unanimously voted to amend its eligibility rules and implement a new policy referred to as the “age-based” or “five-for-five” eligibility model. Previously, the NCAA allowed student-athletes five years to complete four seasons of athletic competition, explicitly contemplating a “redshirt” year for many student-athletes. However, the new eligibility model now grants student-athletes five years of athletic competition eligibility to be completed following (i) the student-athlete’s 19th birthday or (ii) when they enroll in college, whichever date is earlier. This model does not allow for voluntary or medical redshirts and has few exceptions which are almost exclusively limited to military service, pregnancy, or religious missions.

The NCAA immediately adopted the new eligibility model but did not apply the model retroactively to student-athletes who enrolled in college in 2022 and exhausted four years of playing eligibility by the end of this past season. Thus, these student-athletes were not permitted to pursue a fifth year of eligibility unlike all other student-athletes who enrolled between 2023 and 2026. The NCAA’s decision to not apply the policy to the 2022 enrollment class had a practical rationale: that the affected student-athletes had already graduated and/or exhausted their eligibility, the transfer portal was closed, and coaches had already filled their roster spots accordingly. As such, the NCAA reasoned that broadly allowing thousands of student-athletes to return to college athletics would have significant downstream effects which could lead to the younger student-athletes losing their roster spots, sparking chaos across college sports. However, unsurprisingly, the NCAA’s decision to exclude the 2022 enrollment class sparked litigation across the country, most notably the case of *Wisne v. NCAA* in the District of Colorado.

In *Wisne*, a group of 12 already-graduated student-athletes from the 2022 enrollment class challenged the NCAA’s application of the new eligibility model and sought an injunction to allow them to participate in the upcoming 2026-27 season. On July 31, U.S. District Judge Charlotte N. Sweeney certified a nationwide class and issued a preliminary injunction requiring the NCAA to declare the affected student-athletes immediately eligible on the grounds that the class would suffer “irreparable harm” if denied the opportunity to participate. Judge Sweeney defined the class as “All persons in the United States who began to play in collegiate sports in the 2022-2023 season, competed in NCAA Division I sports, and completed four years of eligibility as defined by the NCAA’s prior rules by the conclusion of the 2025-2026 season, and are therefore barred from playing a fifth season due to the NCAA’s adoption and immediate implementation of the Five-Year Eligibility Rule.”

The NCAA immediately filed an emergency motion for clarification as to the scope of the injunction. On August 2, Judge Sweeney issued separate follow-up orders responding to the NCAA and clarifying several key points of her July 31 injunction. First, Judge Sweeney ruled that class members are not eligible to return if they are over the age of 24, in essence holding that the NCAA **can** enforce its age-based eligibility policy.

Second, class members are not eligible to return if they have already signed a professional contract. This means class members who entered a professional draft or signed a professional contract overseas cannot return to compete in an NCAA sport. Third, the NCAA can still enforce its transfer rules with regard to class members. Those who did not formally enter the transfer portal during their sport's transfer window cannot transfer, although they can still return to their previous team. Last, schools who seek to add a class member to their current roster who was made eligible by the injunction are still subject to the revenue-sharing cap and roster limits set by the *House v. NCAA* settlement.

On August 3, the NCAA moved for a stay of the injunction and filed a notice of its expedited appeal to the Tenth Circuit. NCAA Chief Legal Officer Scott Bearby called the injunction "egregiously wrong" and argued that the injunction seeks to supplant the House settlement, an agreement by which all plaintiffs in *Wisne* are bound. The crux of the NCAA's legal argument is that an injunction is improper because plaintiffs are not likely to succeed on the merits of the case.

The NCAA argues it will prevail on antitrust grounds, notably citing to Tenth Circuit precedent which holds that a defendant's timing in enforcing a lawful restriction is not grounds for an antitrust challenge. See *Christy Sports, LLC v. Deer Valley Resort*, 555 F.3d 1188 (10th Cir. 2009). Further, the NCAA argues that potential lost NIL earnings are not grounds for an antitrust challenge because the payments for NIL engagements would not come from the NCAA or its member institutions, and case law does not support antitrust violations based on third-party actions.

Additionally, the NCAA argues that it was faced with the choice of "applying the new policy retroactively and taking away opportunities from entering high-school students or applying the policy prospectively so incoming student-athletes can have meaningful opportunities to compete." The NCAA contends that the class members entered their final seasons with the expectation that it would be their last and have not demonstrated that open roster spots even exist. Thus, the NCAA argues that if class members are permitted to return to compete in the NCAA, potentially thousands of incoming student-athletes will be displaced and suffer irreparable harm.

On August 4, Plaintiffs responded to the NCAA's motion to stay by filing an emergency motion to enforce the injunction. Plaintiffs seek an immediate order directing the NCAA to (i) stop blocking class members from negotiating or accepting roster spots; (ii) issue clarifying notice to schools that class members are eligible at any available school; and (iii) develop and report the actual process for an athlete to sign for a fifth year. Like the NCAA's motion to stay, this motion will be ruled on by Judge Sweeney in the coming days.

As the fall sports season begins in three weeks, NCAA Division I schools and class members now await multiple rulings which have the potential to rock the college sports landscape. If you are with a Division I institution, please reach out to the authors or a member of Kutak Rock's [College Athletics Industry Practice Group](#) for more information about how these legal developments could affect you.

