

Are You Keeping Score? An Update on Recent Sports Law Developments

FEBRUARY 21, 2024

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Beam Me Up! The NCAA Transfer Portal May Be Opened Without Restriction

We may be embarking on the end of the infamous transfer portal hold that restricts college-athletes from immediate competition after switching schools. In an age of increasing athlete autonomy, this ruling could impose a ripple effect on the hotly debated issue of college-athlete compensation.

The rule in question requires college-athletes who have transferred two or more times between NCAA Division 1 schools to sit out at least a year upon arrival before competing with their new team. U.S. District Judge John Preston Bailey's December 13, 2023 ruling granting a temporary restraining order preventing enforcement of this rule lays the groundwork for an open season on college-athletes financially motivated moves in the light of NIL legislation. Athletes who would formerly be deterred from transferring because they did not wish to lose momentum within the sport or be forced to sit out possibly delaying their contributions to a championship caliber team, would be permitted to immediately step onto the court or field without hinderance.

Under Judge Bailey's temporary order, a 14-day window was opened in West Virginia during which Division 1 student-athletes who had previously been blocked from playing because of the transfer eligibility rule can immediately join their teams for competitive action. Ohio Attorney General Dave Yost described the decision as, "...only fair and right. Up to 100 athletes or more could be impacted by today's restraining order against the NCAA double transfer rule."

West Virginia Attorney General Patrick Morrissey added, "We are looking forward to proving that the NCAA has violated the Sherman Act by failing to maintain a consistent and defensible transfer rule and by denying these student athletes the chance to play." Yost and Morrissey were joined in the suit by AGs from Colorado, Illinois, New York, and Tennessee.

This joint effort to attack the long-standing transfer eligibility rule illustrates the trend of dismantling the NCAA's historic bureaucracy over student-athletes. It also mirrors the recent trend of arguing for student-athletes to be considered employees rather than students and allow students to be paid revenue from NIL proceeds and sponsorship deals.

The NCAA responded to the district court's restraining order stating, "As a result of today's decision impacting Division 1 student-athletes, the Association will not enforce the year in residency requirement for multiple-time transfers and will begin notifying member schools." The window for unfettered athletic competition for transfers remains in effect as the case continues to expand its reach.

Recently, the Department of Justice, Minnesota, Mississippi, Virginia, and the District of Columbia joined as plaintiffs in the Amended Complaint filed in January 2024. According to *Law360*, this could be the first time that the DOJ has signed on to a state-led antitrust suit. As the number of states taking interest in this rule grows, it is evident that the fate of the historic transfer rule is in limbo. To date, the temporary restraining order remains in effect and the rule is on hold. So, athletes who were forced to sit on the sidelines due to their second transfer are now back on the courts and fields competing across the country and watching closely for the outcome of this case.

The case is *State of Ohio et al. v. National Collegiate Athletic Association*, case number 1:23-cv-00100, in the U.S. District Court for the Northern District of West Virginia.

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