

## Comments

### Abuse Beyond Title IX: Advancing Laws and Policies to Combat Coaching Abuse in Intercollegiate Athletics

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#### ABSTRACT

Outsiders see college athletics as a privileged environment. Student-athletes receive scholarships, monetized fame, and a chance to compete professionally. However, outsiders often do not see the dark side of competing in college sports. Egregious cases of Title IX-related sexual abuse in college sports sometimes draw national attention. However, other forms of physical and emotional abuse plaguing athletic programs never leave the athletic department.

Student-athletes stay silent because the current structure of college sports provides scarce protections. The NCAA, created to safeguard student-athlete welfare, refuses to address coaching abuse. Instead, the NCAA has given institutions responsibility over coaching conduct. Institutions misuse their self-governance power to protect abusive coaches because of their financial value. Institutional willingness to cover up abuse renders coaches untouchable and student-athletes powerless. When the disregard for student-athlete safety goes too far, it leads to preventable

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deaths, as in the case of University of Maryland football player Jordan McNair.

Maryland legislators enacted a law to change the culture of intercollegiate athletics, which often insulates abusive coaches. Maryland is the only state with a law protecting student-athletes and providing institutional oversight. This Comment analyzes the current structure of intercollegiate athletics and its failure to protect student-athletes from abuse that does not fall squarely into Title IX. The analysis reveals a regulatory gap that Maryland legislation sought to fill. This Comment argues for state-level oversight of college athletic programs to curtail coaching abuse. Additionally, this Comment proposes statutory provisions states should implement to protect student-athlete educational and athletic opportunities and hold institutions accountable.

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#### I. INTRODUCTION

In June 2018, University of Maryland football player Jordan McNair passed away from a heat stroke suffered during a preseason practice.<sup>1</sup> An investigation into McNair's death revealed the athletic department's

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1. See James Crabtree-Hannigan, *Maryland Football's Jordan McNair Dies After Collapsing During Team Workout*, DIAMONDBACK (June 13, 2018), <https://perma.cc/5MJY-5VSF>.

disregard for student-athlete health and safety.<sup>2</sup> McNair's death was preventable.<sup>3</sup>

Scrutiny of the University of Maryland's athletic department did not stop at McNair—it just began.<sup>4</sup> McNair's death exposed the abuse and mistreatment present in Maryland's football program.<sup>5</sup> Coaches harassed and mocked players,<sup>6</sup> dismissed their injuries,<sup>7</sup> and pushed them to exhaustion.<sup>8</sup> Athletes feared repercussions for reporting abuse.<sup>9</sup> The institution's lack of oversight proved even more unsettling.<sup>10</sup> Athletic administrators ignored their duty to oversee the football program.<sup>11</sup> Institution administrators failed to address reported abuse.<sup>12</sup> The coaches who facilitated the abuse held virtually unchecked power.<sup>13</sup>

The events at the University of Maryland are not an isolated occurrence.<sup>14</sup> Student-athletes nationwide experience coaching abuse and institutional betrayal.<sup>15</sup> Some egregious cases of abuse have garnered national attention, such as the sexual assaults perpetrated by sports doctors Robert Anderson at the University of Michigan and Larry Nassar at Michigan State University.<sup>16</sup>

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2. See WALTER'S INC., INDEPENDENT EVALUATION OF PROCEDURE AND PROTOCOLS RELATED TO THE JUNE 2018 DEATH OF A UNIVERSITY OF MARYLAND FOOTBALL STUDENT-ATHLETE 8,16 (2018) [hereinafter McNAIR INVESTIGATION] (explaining failures of athletic department in treating McNair's heat stroke); see also Jonas Shaffer & Mike Klingaman, *Cold-Water Immersion is 'Magic Elixir' for Heatstroke—and a Question in Treatment of Maryland Jordan McNair*, BALT. SUN (Aug. 13, 2018, 9:05 PM), <https://perma.cc/X6Q9-NUJF>.

3. See *id.*

4. See *A Timeline of Events at the University of Maryland in Jordan McNair Saga*, WASH. POST (Oct. 31, 2018, 11:52 PM), <https://perma.cc/XY6L-NXTS>.

5. See Alex Kirshner et al., 'Disturbing Videos,' *Alleged Abuse, and More Takeaways from 192-Page Maryland Report*, SBATION, (Oct. 26, 2018, 8:06 AM), <https://perma.cc/UU2L-345F>.

6. See Jillian Atelsek, *Report Finds Rick Court Terrorized Maryland Football Players and Wasn't Held Accountable*, DIAMONDBACK (Oct. 26, 2018), <https://perma.cc/2SCD-P72W>.

7. See *id.* (describing that a player recovering from surgery was verbally and physically harmed for struggling to complete a workout).

8. See *id.* (explaining that McNair's death "was a 'clear culmination' of [the] 'hyper aggressive' culture").

9. See *id.*

10. See Alex Kirshner et al., *supra* note 5.

11. See F. AZAR ET AL., REPORT TO THE UNIVERSITY OF MARYLAND OF AN INDEPENDENT INVESTIGATION OF THE UNIVERSITY OF MARYLAND FOOTBALL PROGRAM 5–7 (2018) [hereinafter MARYLAND FOOTBALL INVESTIGATION].

12. See *id.* at 10–11.

13. See *id.* at 10.

14. See MARTIN J. GREENBERG, OPEN LETTER TO THE NCAA REGARDING THE ENDEMIC PROBLEM OF PHYSICAL AND MENTAL ABUSE BY COACHES IN COLLEGE ATHLETICS – ABUSE MUST END 3 (2016).

15. See *id.*

16. See David Jesse, *Michigan's Warde Manual Mishandled Dr. Robert Anderson Complaint by Sending it to Lawyers*, DETROIT FREE PRESS (Apr. 16, 2020, 7:00 AM),

However, abuse in intercollegiate athletics goes beyond Title IX sexual abuse and harassment.<sup>17</sup> Some coaches have been accused of physical and emotional abuse.<sup>18</sup> Others have allegedly pressured athletes to compete through severe injuries or harassed athletes until they have no choice but to leave the team.<sup>19</sup> The outcomes for the student-athlete are detrimental.<sup>20</sup> Many report leaving their sport with long-term psychological problems.<sup>21</sup> Even worse, for some, escaping the abuse has required forfeiting the scholarship they depended on to attain higher education.<sup>22</sup>

The governing bodies of college sports stonewall student-athletes who seek redress.<sup>23</sup> The National Collegiate Athletic Association (NCAA) escapes liability by narrowing its rules' application and assigning institutions responsibility for coaching conduct.<sup>24</sup> Institutions, valuing their public image over student-athlete safety, exploit internal governance powers to ignore amoral conduct.<sup>25</sup>

The lack of student-athlete protection requires government intervention to address regulatory gaps causing systematic coaching

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<https://perma.cc/C78N-V3Y8>; see also Collin Binkley and Carole Feldman, *Michigan State University Fined \$4.5 Million in Nassar Case*, AP NEWS (Sept. 5, 2019, 4:36 PM), <https://perma.cc/LMH5-YBER>.

17. See Michael H. LeRoy, *Harassment, Abuse, and Mistreatment in College Sports: Protecting Players through Employment Laws*, 42 BERKELEY J. EMPLOY. LAB. L. 101, 114–15 (2020) (explaining that over 66% of lawsuits brought on by student-athletes between 1981 and 2019 were Title IX and related sexual abuse and harassment claims).

18. See Martin J. Greenburg, *Abuse in College Athletics Continues*, L. OFF. OF MARTIN J. GREENBURG LLC: SPORTS&BIZ BLOG (June 13, 2023), <https://perma.cc/RR66-TL32>.

19. See, e.g., *Ramsey v. Auburn Univ.*, 191 So. 3d 102, 104–05 (Miss. 2016) (explaining that a football player returning from back surgery was reinjured after weight coach ignored doctor's orders and harassed player to engage in strenuous lifts); see also Andy Berg, *Rutgers Softball Players Allege Abuse by Coach*, ATHLETIC BUS. (Oct. 31, 2019), <https://perma.cc/6BEF-HZWM> (explaining the story of a Rutgers softball coach who allegedly mistreated players and attempted to revoke scholarships of two players who eventually transferred).

20. See Katie Lever, *'A Mental Health Battle': How Abusive Coaching Impacts College Athletes*, GLOB. SPORT MATTERS (May 24, 2022), <https://perma.cc/G4TE-BKW9>.

21. See *id.*

22. See *id.*

23. See THE DRAKE GROUP, POSITION STATEMENT: COLLEGE ATHLETE HEALTH AND PROTECTION FROM PHYSICAL AND PSYCHOLOGICAL HARM 7–8 (2019) [hereinafter COLLEGE ATHLETE PROTECTION] (discussing NCAA and institution failures to protect student-athletes).

24. See THE DRAKE GROUP, POSITION STATEMENT: ATHLETIC GOVERNANCE ORGANIZATION AND INSTITUTIONAL RESPONSIBILITIES RELATED TO PROFESSIONAL COACHING CONDUCT 9–10 (2016) [hereinafter ATHLETIC GOVERNANCE ORGANIZATION AND INSTITUTIONAL RESPONSIBILITIES].

25. See COLLEGE ATHLETE PROTECTION, *supra* note 23, at 6.

abuse.<sup>26</sup> Federal and state governments fail to intervene, except for Maryland.<sup>27</sup> The mistreatment uncovered at the University of Maryland prompted state legislators to act against student-athlete abuse.<sup>28</sup> Maryland is the only state with legislation that safeguards student-athletes and designates the state as an independent regulatory authority over institutions.<sup>29</sup>

This Comment examines abuse in intercollegiate athletics that falls outside of Title IX and how the current governance structure fails to protect student-athletes from coaching abuse. Part II of this Comment provides background on abuse in intercollegiate athletics.<sup>30</sup> This Part will review coaching abuse and the college sports environment.<sup>31</sup> This Part will then examine the relationship between the college sports governing structure and systemic coaching abuse.<sup>32</sup> This Part also uses Jordan McNair and the abuse exposed within the University of Maryland's football team as an example.<sup>33</sup> Finally, Part II discusses Maryland's law, enacted after the events at the University of Maryland, and examines its benefits.<sup>34</sup>

This Comment argues that states should follow Maryland's legislation to regulate institutional responses to coaching abuse in college sports.<sup>35</sup> Part III discusses why state-level authority should govern over federal authority, in view of Name, Image, and Likeness regulation and SafeSport.<sup>36</sup> Part III then proposes provisions for future laws to strengthen safeguards against coaching abuse.<sup>37</sup> The proposals model the compliance regime set forth by the Fair Labor Association to increase institutional oversight and protect student-athletes from retaliation.<sup>38</sup>

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26. See, e.g., Marc H. Morial, *If Colleges Won't Confront Problem of Abuse Against Student Athletes, Congress Must Step In*, CHI. SUN-TIMES (Aug. 9, 2023, 6:30 AM), <https://perma.cc/45U7-6FTJ>.

27. See *New Law Gives Student-Athletes Mandatory Whistleblower Protections*, MINTZ (May 16, 2019) [hereinafter *Maryland's New Law*], <https://perma.cc/WQZ3-WTUD>; see also Michael H. Leroy, *Considering College Athletes as Employees Could Curb Coaching Abuse*, SPORTICO (Mar. 1, 2023, 8:30 AM), <https://perma.cc/WCR9-ZG6U> (showing other legislation inadequately addresses student-athlete mistreatment and abuse).

28. See Kate Ryan, *New Maryland Law Aimed at 'Team Culture' to Help Protect College Athletes*, WTOP NEWS (May 13, 2019, 5:30 PM), <https://perma.cc/TY7C-ALWL>.

29. See MD. CODE ANN., EDUC. § 11-1601 (West 2019).

30. See discussion *infra* Part II.

31. See discussion *infra* Section II.A.

32. See discussion *infra* Sections II.B–C.

33. See discussion *infra* Section II.D.

34. See discussion *infra* Section II.E.

35. See discussion *infra* Part III.

36. See discussion *infra* Section III.A.

37. See discussion *infra* Section III.B.

38. See *id.*

## II. BACKGROUND

To understand why legislative intervention is necessary to protect student-athletes from coaching abuse, it is crucial to examine the regulatory structure of college sports.<sup>39</sup> Intercollegiate athletics exists in an environment shaped by power imbalances between student-athletes and coaches, the NCAA's limited oversight, and institutional exploitation of self-governance.<sup>40</sup> These factors contribute to both the persistence of abuse and the difficulty of reform, as illustrated by the tragic case of Jordan McNair and the systemic failures within the University of Maryland football program.<sup>41</sup>

### A. Abuse in Intercollegiate Athletics

Abuse and mistreatment in sports take many forms.<sup>42</sup> While media most often highlights sexual abuse, other forms of abuse are equally prevalent.<sup>43</sup> While research on coaching abuse is limited, anecdotal accounts depict several primary categories of abuse, including physical abuse,<sup>44</sup> emotional abuse,<sup>45</sup> and neglect.<sup>46</sup> Other forms of abuse include harassment, retaliation, being forced to play through injuries, and overtraining that creates long-term medical problems.<sup>47</sup>

The unique environment of college sports partially explains the prevalence of coaching abuse.<sup>48</sup> First, an extreme power imbalance exists

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39. See ATHLETIC GOVERNANCE ORGANIZATION AND INSTITUTIONAL RESPONSIBILITIES, *supra* note 24, at 3.

40. See discussion *infra* Sections II.A–C.

41. See discussion *infra* Section II.D.

42. See Courtney Gattis & Matt Moore, *A Conceptual Analysis of Maltreatment in Sports: A Sport Social Work Perspective*, 4 FRONTIERS SPORTS AND ACTIVE LIVING 1, 3 (2022).

43. See Katie Alexander, *Emotional Abuse in Women's Athletics: Win at All Costs*, VIRAGO PROJECT (Mar. 6, 2021), <https://perma.cc/4X5T-WZ3M>.

44. See Gattis & Moore, *supra* note 42, at 3 (defining physical abuse as “being deliberately hurt” in a way that causes physical injury).

45. See *id.* (defining emotional abuse as “deliberate, non-contact behaviors” such as “belittling, humiliating, shouting, and threatening”).

46. See *id.* (defining neglect as “an omission of care such as withholding food or nutrition and forcing an athlete to train while injured”).

47. See Lindsay Dodgson, *Female College Athletes from Across the US Say They've Been Bullied, Manipulated, and Psychologically Abused by Their Coaches*, INSIDER (Oct. 30, 2020, 12:38 PM), <https://perma.cc/WS29-BD29>; see also *Lee v. La. Bd. of Trs. for State Colls.*, 280 So. 3d 176, 181 (La. Ct. App. 2019) (explaining that conditioning by running 4.5 miles in extreme heat and humidity after a lifting session used as punishment resulted in one player's death and another player's permanent injuries).

48. See DEBORAH L. BRAKE & MARIAH BURTON NELSON, *STAYING IN BOUNDS* 15 (2021) (“At the elite level of intercollegiate athletics, coaches have power over student-athletes' lives far exceeding the mechanics of practicing and competing in a sport.”).

between an athlete and a coach.<sup>49</sup> Coaches control an athlete's place on the roster, their athletic scholarships, and their references to transfer athletic programs.<sup>50</sup>

Consequently, student-athletes struggle to report abuse due to the risks involved.<sup>51</sup> First, student-athletes jeopardize academic and athletic opportunities.<sup>52</sup> Coaches can revoke the scholarship an athlete relied on to afford higher education.<sup>53</sup> Similarly, reporting abuse may endanger an athlete's transfer opportunities.<sup>54</sup> Coaches can blacklist an athlete from other athletic programs by making derogatory statements to prospective coaches, effectively barring the athlete from joining a new team.<sup>55</sup>

Further, a coach's control extends beyond the realm of athletics.<sup>56</sup> The rigorous time commitment required by sports dictates academic and social schedules, leisure time, and social networks.<sup>57</sup> Student-athletes often feel confined to their coach and team, isolated from their original support networks, and restricted from forming relationships with non-athlete peers.<sup>58</sup>

Consequently, student-athletes grow dependent on the coach and team for guidance, self-worth, and approval.<sup>59</sup> As a result, some student-athletes will tolerate abuse to prevent ostracization.<sup>60</sup> Abusive coaches often attempt to exclude athletes who identify abuse to prevent awareness

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49. See John Leland, *The Fierce Life and Sudden Death of America's Strongest Woman*, N.Y. TIMES (Jan. 20, 2023), <https://perma.cc/T2R4-NA6Z> ("Coaches, like teachers and psychotherapists, enjoy an unequal power relationship with the athletes in their care.").

50. See BRAKE & NELSON, *supra* note 48, at 15; see also *The Proper Use and Abuse of Roster Management*, SPORTS MGMT. RES., <https://perma.cc/UGG4-3RTM> (last visited June 2, 2024) (explaining that a roster is a list of players eligible to train and compete).

51. See SEN. CHRIS MURPHY, MADNESS, INC.: HOW COLLEGE SPORTS CAN LEAVE ATHLETES BROKEN AND ABANDONED 8 (2019).

52. See COLLEGE ATHLETE PROTECTION, *supra* note 23, at 22.

53. See BRAKE & NELSON, *supra* note 48, at 15.

54. See Berg, *supra* note 19.

55. See Second Amended Class Action Complaint at 50, *Doe 1 v. Univ. of San Francisco*, No. 3:22-CV-01559-LB (N.D. Cal. 2023) [hereinafter USF Complaint] (explaining that USF baseball coaches revoked player John Doe 10's scholarship and blacklisted him from other programs after he told athletic administrators about abuse); see also *id.* at 6 (blacklisting "end[s] or severely limit[s] the players' continued . . . careers").

56. See BRAKE & NELSON, *supra* note 48, at 15.

57. See *id.*; see also *This Study Proves Just How Much Time College Athletes Spend on their Sport*, NCSA COLLEGE RECRUITING, <https://perma.cc/X2DB-5VAM> (last visited Aug. 3, 2024) (showcasing time demands of Division I sports).

58. See Complaint for Damages at 18–19, *Touhey v. Regents of Univ. of California*, No. 23CV032249 (Cal. Super. Ct. May 1, 2023) [hereinafter UC Berkeley Complaint] (exemplifying how Coach McKeever restricted athletes' ability to form relationships outside of the team or visit family).

59. See *id.* at 14–15 n. 16; Leland, *supra* note 49 (explaining how identity as an athlete and a coach's power creates dependency).

60. See Dodgson, *supra* note 47.

from permeating throughout the team.<sup>61</sup> Additionally, original support networks, often unaware of the athlete's suffering, blindly encourage the athlete to continue competing.<sup>62</sup> Even if the network recognizes the abuse, its capacity to provide support is limited.<sup>63</sup> Parents frequently hesitate to confront a coach because it may worsen abuse against their child.<sup>64</sup> Many athletes feel compelled to remain in their sport due to the lack of advocacy.<sup>65</sup>

The culture of college sports also contributes to coaching abuse.<sup>66</sup> College sports embrace a "winning at all costs" mindset.<sup>67</sup> Coaches, trainers, and elite athletes promote the longstanding belief that tough coaching begets success.<sup>68</sup> Athletes learn to accept physical and emotional abuse under the guise of effective coaching.<sup>69</sup> Additionally, coaches expect athletes to be dedicated to the team and trust the coach's leadership without question.<sup>70</sup> Under this ideological framework, athletes defy their team commitment when they question abusive conduct.<sup>71</sup>

### B. *Intercollegiate Sports Structure*

Coaching staff often inflict abuse, but the college sports governance structure perpetuates the problem.<sup>72</sup> In the United States, state and federal governments do not control college sports.<sup>73</sup> Title IX provides safeguards against sexual harassment and abuse by coaches, but it does not regulate the other forms of abuse previously discussed.<sup>74</sup> Thus, the NCAA—the

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61. See UC Berkeley Complaint, *supra* note 58, at 59 (excluding a former athlete in group chats and team social events after Coach McKeever's abuse was perceived as the athlete's own wrongdoing).

62. See *id.* at 62 (explaining that parents noticed a change of negative demeanor in the athlete, but encouraged athlete to remain on the team and not quit).

63. See *id.* at 60 (stating that other parents told mother of athlete who was forcefully grabbed by McKeever to not get involved because it would only "make it worse" for the athlete).

64. See *id.* at 56 (explaining that parents did not confront Coach McKeever or administrators about the abuse from fear it would ruin athletes' chances to transfer).

65. See *id.* at 62 (describing that an athlete "didn't feel that she could quit or transfer and thus lose her scholarship").

66. See Gattis & Moore, *supra* note 42, at 6–7.

67. Rick Eckstein, 'Nobody Said Anything Because They Fearing Being Benched' – How Abuse is Baked into American Sports, CONVERSATION (Oct. 18, 2022, 8:36 AM), <https://perma.cc/93TB-JL86>.

68. See Dodgson, *supra* note 47.

69. See Lever, *supra* note 20.

70. See UC Berkeley Complaint, *supra* note 58, at 21.

71. See *id.*

72. See COLLEGE ATHLETE PROTECTION, *supra* note 23, at 7–8.

73. See Exec. Order No. 11868, 40 Fed. Reg. 30617 (Jul. 22, 1975) ("The Federal Government has never attempted to direct amateur athletics in this country, nor should it.").

74. See ATHLETIC GOVERNANCE ORGANIZATION AND INSTITUTIONAL RESPONSIBILITIES, *supra* note 24, at 12–13.



premier intercollegiate athletic governing body—is responsible for creating rules to protect athletes from coaching abuse,<sup>75</sup> yet it fails to do so.<sup>76</sup>

The NCAA was founded in 1906 to reduce the increasing injuries and fatalities in college football.<sup>77</sup> Originally tasked with creating rules to ensure the physical safety of athletes during competition, the NCAA has since evolved into the national governing body for college sports.<sup>78</sup> Today, the NCAA governs over 1,000-member institutions and 500,000 college athletes in all three national divisions.<sup>79</sup>

As the national governing body, the NCAA derives its oversight and regulatory power from member institutions.<sup>80</sup> Member institutions form the legislative bodies that decide NCAA rules.<sup>81</sup> More specifically, institutional and athletic administrators, athletes, coaches, and conference personnel serve as representatives to the member institutions.<sup>82</sup> As a result, these institutions virtually create and self-regulate the rules they must follow.<sup>83</sup>

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75. See *What is the NCAA?*, NAT'L COLLEGIATE ATHLETIC ASS'N, <https://perma.cc/44M8-DN5R> (last visited June 22, 2024).

76. See generally NAT'L COLLEGIATE ATHLETIC ASS'N, DIVISION I: 2023-24 MANUAL, art. 10–19 (2023) [hereinafter NCAA MANUAL], <https://perma.cc/N35U-X85H> (stating the specific rules and infractions of the NCAA).

77. See *History*, NAT'L COLLEGIATE ATHLETIC ASS'N, <https://perma.cc/LU26-DUJA> (last visited June 20, 2024) (explaining that the NCAA was created after 18 deaths and 159 serious injuries occurred in the 1904 football season).

78. See *id.* (explaining that the NCAA formed through 62 colleges and universities becoming charter members); see also *Intercollegiate Sports Organizations*, AM. STUDENT ATHLETE LOGISTICS, <https://perma.cc/TS7F-VEYB> (last visited Oct. 10, 2023) (explaining that other college sports governing organizations exist, but “[t]he NCAA is the largest University Athletic governing body in the world”).

79. See *Our Division I Members*, NAT'L COLLEGIATE ATHLETIC ASS'N, <https://perma.cc/W3YG-C695> (last visited June 20, 2024) (stating that 350 Institutions and 192,000 student-athletes comprise the Division I level of collegiate athletics).

80. See *Division I Governance*, NAT'L COLLEGIATE ATHLETIC ASS'N, <https://perma.cc/RQ6B-UH DU> (last visited June 20, 2024).

81. See NAT'L COLLEGIATE ATHLETIC ASS'N, HOW THE NCAA WORKS: DIVISION I, <https://perma.cc/W9HV-CHA8> (last updated Feb. 2018) (describing NCAA regulatory bodies and their assigned roles and duties).

82. See *Who are the NCAA Board of Governors*, NAT'L COLLEGIATE ATHLETIC ASS'N, <https://perma.cc/9SVY-2WWV> (last visited June 20, 2024); see also *Division I Board of Directors*, NCAA (2023), <https://perma.cc/2AHA-PVTA>; *Division I Council*, NAT'L COLLEGIATE ATHLETIC ASS'N, <https://perma.cc/BEU7-NPFR> (last visited June 20, 2024); *Division I Committees*, NAT'L COLLEGIATE ATHLETIC ASS'N, <https://perma.cc/2NK4-BAP9> (last visited June 20, 2024) (explaining the composition of each governing body in the NCAA).

83. See Cody J. McDavis, *The Value of Amateurism*, 29 MARQ. SPORTS L. REV. 275, 293 (2018).

The NCAA adopts rules to promote three guiding principles: “academic success, student-athlete well-being[,] and fairness.”<sup>84</sup> Their rules govern topics including inducements or extra benefits, improper financial aid, banned substances, and academic eligibility.<sup>85</sup> These comprehensive rules are meant to foster equal competition among programs with different financial resources.<sup>86</sup>

The NCAA enforces its rules through its infractions process,<sup>87</sup> deciding violations on a case-by-case basis.<sup>88</sup> Level I violations, which are the most severe, incur the harshest penalties.<sup>89</sup> Penalties may be imposed on individual violators or the institutions themselves.<sup>90</sup> The infractions system prevents competitive disadvantages and upholds “integrity and fair play.”<sup>91</sup>

However, the NCAA does not have absolute rulemaking and disciplinary authority.<sup>92</sup> The NCAA delegates responsibility over the student-athlete/coach relationship to the institutions.<sup>93</sup> Each member institution must conduct their athletic programs “in a manner designed to protect . . . the physical and mental health and safety of student-athletes.”<sup>94</sup>

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84. *History*, *supra* note 77; *see also The 16 Principles for Conduct of Intercollegiate Athletics*, NAT’L COLLEGIATE ATHLETIC ASS’N, <https://perma.cc/5N3U-WZRM> (last visited June 24, 2024) (setting out the 16 principles that NCAA legislation seeks to advance).

85. *See NCAA MANUAL*, *supra* note 76, art. 10.1; *see also Our Division I Priorities*, NAT’L COLLEGIATE ATHLETIC ASS’N, <https://perma.cc/A58X-3JKB> (last visited Oct. 13, 2023).

86. *See Our Division I Priorities*, *supra* note 86 (explaining that the NCAA is committed to “fair competition” by controlling areas where Division I schools’ available resources and facilities vary).

87. *See Division I Infractions Process*, NAT’L COLLEGIATE ATHLETIC ASS’N (June 20, 2018), <https://perma.cc/8TP8-8YJN>.

88. *See NAT’L COLLEGIATE ATHLETIC ASS’N, INSIDE THE DIVISION I INFRACTIONS PROCESS: VIOLATION STRUCTURE AND LEVELS 1* (2023).

89. *See id.* (explaining that level I offenses include those that “[s]eriously undermine or threaten the integrity of college sports”).

90. *See, e.g., Nicole Auerbach, The Perception and Reality of NCAA Show-Cause Penalties*, USA TODAY (May 27, 2014, 6:57 PM), <https://perma.cc/5Q6J-EHB6> (explaining that the show-cause penalty bans an individual from working for any NCAA member school for a determined amount of time); *see also, e.g., Enforcement Process: Penalties*, NAT’L COLLEGIATE ATHLETIC ASS’N (Nov. 27, 2013), <https://perma.cc/DXH4-TVWQ> (explaining that the “death penalty” applies to institutions for egregious or major violations that occur within five years of a major case).

91. *See NCAA MANUAL*, *supra* note 76, art. 19.01.1.

92. *See Ralph D. Russo, Why Some College Sport Scandals Don’t Draw NCAA Penalties*, AP NEWS (Aug. 25, 2018, 2:45 AM), <https://perma.cc/66FQ-P9D8> (stating that the NCAA’s governing power is limited by “purpose and jurisdiction”).

93. *See NCAA MANUAL*, *supra* note 76, art. 6(A) (“The control and responsibility for the conduct of intercollegiate athletics shall be exercised by the institution itself.”).

94. *Id.* art. 1(D).

Arguments that the student-athlete/coach relationship falls under NCAA regulation have failed for several reasons.<sup>95</sup> First, courts uphold the NCAA's position that it has no duty to protect student-athletes.<sup>96</sup> The NCAA's generalized intent to protect student-athletes does not create a legally recognized duty because the institutions "exercise[] exclusive, day-to-day control" over its athletic programs and staff.<sup>97</sup> Similarly, courts refuse to require the NCAA to regulate the student-athlete/coach relationship because of its status as a private, voluntary entity.<sup>98</sup>

The NCAA's scope of authority further nullifies its power over the student-athlete/coach relationship.<sup>99</sup> NCAA rules and infractions only apply to athletic competition.<sup>100</sup> Law and institutional policy govern abusive coaching.<sup>101</sup> Limits on authority also apply to the NCAA's disciplinary power.<sup>102</sup> For example, in 2014, the NCAA reversed its sanctions on Penn State's football team for former Coach Jerry Sandusky's sexual abuse of minors.<sup>103</sup> The NCAA ruled the sanctions improper because the matter did not break any NCAA rules and involved criminal law.<sup>104</sup>

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95. See First Amended Complaint at 107, *Doe 1 v. Nat'l Collegiate Athletic Ass'n.*, No. 22-CV-01559, 2023 WL 105096 (N.D.C.A. July 15, 2022) (alleging that the NCAA had a duty to ensure plaintiff's safety and freedom against abuse from University of San Francisco baseball coaching staff); see also Class Action Complaint at 78–79, *Aldrich v. Nat'l Collegiate Athletic Ass'n*, 484 F.Supp. 3d 779 (N.D. Cal. 2020) (No. 20-CV-02310) (alleging that the NCAA has a duty to protect student-athlete/coach relationships because student-athletes cannot adequately protect themselves due the power differential).

96. See *McCants v. Nat'l Collegiate Athletic Ass'n*, 201 F.Supp. 3d 732, 741–45 (M.D.N.C. 2016) (denying the plaintiff's argument that the NCAA's statements on safeguarding student-athlete educational opportunities created a legal duty to "ensure the 'academic soundness' of classes taken by them").

97. See *id.* at 745 (quoting *Daniels ex rel. Webb v. Reel*, 515 S.E.2d 22, 26–27 (N.C. Ct. App. 1999)).

98. See *Shelton v. Nat'l Collegiate Athletic Ass'n*, 539 F.2d 1197, 1198 (9th Cir. 1976) (denying to interfere with how a voluntary athletic association formulates or enforces rules, absent illegality, or interference with established laws).

99. See Russo, *supra* note 92.

100. See *id.* (stating that the NCAA's primary purpose is to act as the "governing body over sporting competitions").

101. Cf. MUNGER TOLLES & OLSEN, REPORT OF INVESTIGATION REGARDING TERI MCKEEVER 23–30 (2023) [hereinafter MCKEEVER INVESTIGATION] (stating that state and federal law and university policies were relevant in investigating alleged abuse by UC Berkeley women's swimming and diving head Coach Teri McKeever).

102. See Defendant Nat'l Collegiate Athletics Ass'n's Motion to Dismiss at 4, *Doe 1 v. Nat'l Collegiate Athletic Ass'n.*, No. 22-CV-01559, 2023 WL 105096 (N.D.C.A. Sept. 12, 2022) ("The NCAA takes action only whe[n] its member institutions have delegated it responsibility."); see also MCKEEVER INVESTIGATION, *supra* note 101, at 23–30.

103. See Steve Eder & Marc Tracy, *N.C.A.A. Decides to Roll Back Sanctions Against Penn State*, N.Y. TIMES (Sept. 8, 2014), <https://perma.cc/2RSB-MXXG> (stating that NCAA sanctions against the Penn State football program included prohibiting post-season eligibility, reducing the amount of scholarships available, and a \$60 million fine).

104. See Russo, *supra* note 92 (explaining that lack of institutional control violation did not include sexual abuse).

### C. Institutional Control and Abuse

Institutions regulate coaching conduct independently.<sup>105</sup> While institutional presidents are responsible for athletic programs, presidents commonly delegate the institution's athletic director (AD) "administrative power" over the athletic department.<sup>106</sup>

In theory, this hierarchical structure should curtail abuse.<sup>107</sup> The president oversees the AD to ensure they operate the athletic department in line with institutional policies.<sup>108</sup> The president remains informed of athletic-related issues and can intervene through a direct reporting line with the AD.<sup>109</sup> In practice, however, each level in the institutional hierarchy exploits its self-policing power to ignore or conceal abuse.<sup>110</sup>

ADs often exploit their autonomy in the athletic department.<sup>111</sup> Some ADs adopt open-door policies that discourage reporting abuse.<sup>112</sup> With open-door policies, student-athletes avoid confronting the coach to prevent backlash.<sup>113</sup> For example, the University of San Francisco (USF) baseball head coach threatened to kick a player off the team after his mother sought to report the coach's ongoing abuse to athletic administration.<sup>114</sup>

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105. See NCAA MANUAL, *supra* note 76, art. 6(A).

106. See Sara E. Grummert & Raquell M. Rall, *Looking Beyond the Toxic Triangle: Connecting Sexual Abuse to Failed Governance in Higher Education*, 1 J. HIGHER EDUC. ATHLETICS & INNOVATION 34, 37 (2020) (delegating administrative power to ADs because ADs have day-to-day management).

107. See Barbara Osborn & Erianne A. Weight, *Governance of Intercollegiate Athletics in the USA*, in ROUTLEDGE HANDBOOK SPORT GOVERNANCE 213, 222–23 (David Shilbury & Lesley Ferkins eds., 2020).

108. See *id.* at 223.

109. See Shannon Powers et al., *Investigation of Destructive Leadership in a Division I Intercollegiate Athletic Department: Follower Perceptions and Reactions*, 11 INT'L J. SPORTS SCI. COACHING 297, 300 (2016).

110. See *id.* at 299; Grummert & Raquell, *supra* note 106, at 37–38 (supporting the notion that the closed systems in college athletes enables destructive leadership).

111. See Osborn & Weight, *supra* note 107, at 221 (explaining that ADs are responsible for implementing policies and procedures within the athletic department).

112. See Kevin Kruse, *Is the Open-Door Policy Just Lazy Leadership?*, GREAT GAME BUS. (June 28, 2019), <https://perma.cc/FCL3-YHQX> (defining direct communication as an "open-door" policy in which individuals meet and discuss matters informally).

113. See Dylan McDevitt & Raphy Gendler, *Softball Players Detail Years of Mistreatment by Coach, Neglect by Cornell Athletics*, CORNELL DAILY SUN (May 6, 2019), <https://perma.cc/HWR5-BNAU> (statement of Andy Noel, Cornell Univ., Dir. Athletics) (stating that an "open dialogue" between student-athletes and coaches is necessary). *But see* USF Complaint, *supra* note 55, at 84–86 (explaining experience of John Doe 9 related to open-door policy).

114. See USF Complaint, *supra* note 55, at 86.

Open-door policies also discourage student-athletes from reporting to athletic administrators.<sup>115</sup> ADs often alter,<sup>116</sup> minimize,<sup>117</sup> or ignore reports of abuse.<sup>118</sup> Manipulative responses only perpetuate abuse.<sup>119</sup> For example, the University of California, Berkeley (UC Berkeley) did not employ a system to preserve complaints.<sup>120</sup> As a result, administrators allegedly ignored or mishandled over 30 complaints of abuse by the women's swimming and diving coach Teri McKeever for nine years.<sup>121</sup>

The close alignment between athletic administrators and coaches compounds coaching abuse.<sup>122</sup> Concerns about keeping successful coaches at the institution undermine athletic administrators' management duties.<sup>123</sup> For example, ADs seldom fulfill their duty to supervise athletic programs.<sup>124</sup> Subsequently, abusive conduct occurring at training goes undetected.<sup>125</sup> At UC Berkeley, athletic administrators denied witnessing Coach McKeever's abuse, but they failed to attend practices, missing the violent outbursts and hazardous drills student-athletes faced.<sup>126</sup>

Further, athletic administrators often mishandle management tools.<sup>127</sup> Performance evaluations play a vital role in documenting coach

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115. See Kruse, *supra* note 112; UC Berkeley Complaint, *supra* note 58, at 80.

116. See UC Berkeley Complaint, *supra* note 58, at 80 (telling swimmers that McKeever's misconduct was "an accepted practice for an elite D1 program").

117. See *id.* at 8 (claiming that UC Berkeley's AD downplayed McKeever's abuse as "hard" and "tough" that attributed to her program's success).

118. See USF Complaint, *supra* note 55, at 105–06 (claiming that USF's AD ignored calls and emails concerning mistreatment occurring by the baseball coaches).

119. See MARTIN J. GREENBURG, LETTER TO COWLEY COLLEGE – STUDENT ATHLETE ABUSE 3 (2023).

120. See Avinish Kunnath, *UC Berkeley Taking Unannounced Steps After Firing Teri McKeever; How Will Jim Knowlton and Cal Athletics Be Impacted?*, WRITE FOR CAL. (Mar. 8, 2023), <https://perma.cc/4YGG-BK26>; see also Riley Overend, *Cal Fires Teri McKeever After 8-Month Investigation into Allegations of Bullying*, SWIMSWAM (Jan. 31, 2023), <https://perma.cc/9Z54-V7W6> (following an eight-month independent investigation conducted by Munger, Tolles & Olson LLP, Coach McKeever was fired in January of 2023).

121. See Kunnath, *supra* note 120.

122. See COLLEGE ATHLETE PROTECTION, *supra* note 23, at 11.

123. See ATHLETIC GOVERNANCE ORGANIZATION AND INSTITUTIONAL RESPONSIBILITIES, *supra* note 24, at 7.

124. See COLLEGE ATHLETE PROTECTION, *supra* note 23, at 9.

125. See Kunnath, *supra* note 120 (claiming that UC Berkeley could have interfered with McKeever's conduct if better administrative protocols were in place).

126. See UC Berkeley Complaint, *supra* note 58, at 28.

127. See Bo Hanson, *Top 7 Reasons for Coach Performance Reviews*, ATHLETE ASSESSMENTS, <https://perma.cc/GR73-XNZK> (last visited Nov. 10, 2023); see, e.g., UC Berkeley Complaint, *supra* note 58, at 28–29, 31 (explaining Cal's athletic administrators ignored concerns of Coach McKeever's abuse on evaluations and did not conduct student-athlete exit interviews despite high attrition rates, and kept incomplete records for Coach McKeever).

performance and recognizing misconduct.<sup>128</sup> However, ADs frequently neglect their discretion in handling evaluations by ignoring evidence of abuse and extending the coach's contract despite negative feedback.<sup>129</sup>

The athletic department's isolation leads to additional oversight failures at the institutional level.<sup>130</sup> When student-athletes escalate their complaints to outside administration,<sup>131</sup> they often find no recourse.<sup>132</sup> Outside administrators usually return complaints to the AD, regardless of the severity.<sup>133</sup> Once returned, administrators do not monitor the complaint's remediation,<sup>134</sup> leaving student-athletes without resolution.<sup>135</sup>

Presidential oversight failures present the most concern.<sup>136</sup> First, presidents neglect management duties over the AD.<sup>137</sup> Presidents rarely scrutinize the veracity of an AD's narrative of coaching misconduct.<sup>138</sup>

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128. See Hanson, *supra* note 127 (including contract renewal as a reason for evaluations).

129. See, e.g., McDevitt & Gendler, *supra* note 113 (ignoring Cornell softball players' responses on a "hostile team culture" survey and requests to speak to administration about the head coach); see also MCKEEVER INVESTIGATION, *supra* note 101, at CALINT-000370\_0007 (showing that Cal administrators knew of Coach McKeever's abusive conduct from annual evaluation notes).

130. See Allie Grasgreen, *More Athletics Undersight*, INSIDE HIGHER EDUC. (July 22, 2013), <https://perma.cc/2CU7-4VXX>.

131. See, e.g., *People & Culture: Complaint Resolution*, UC BERKELEY, <https://perma.cc/3WKQ-RRAR> (last visited Nov. 12, 2023) (listing campus resources for complaints).

132. See Nanette Asimov, *Players say UC Berkeley Mishandled Bullying Claims Against Women's Soccer Coach*, S.F. CHRON., (April 9, 2023, 12:36 PM), <https://perma.cc/8DJ5-ZJ4Q> (stating that requests to UC system's Office of the President to investigate UC Berkeley women's soccer Coach McGuire turned into an evaluation of whether UC Berkeley followed policies to handle complaints).

133. See MCKEEVER INVESTIGATION, *supra* note 101, at CALINT-000344\_0001-0004 (detailing the OPHD office referred the findings of a student-athlete's complaint against Coach McKeever to athletic administrators for review and remediation).

134. See *id.*

135. See Ben Strauss, *Complaints Against Nebraska Softball Coach Show College Athletes' Limited Options*, WASH. POST (Aug. 30, 2019, 1:49 PM), <https://perma.cc/SHQ6-WREY>.

136. See Elia Powers, *Sports and the Presidential Pedigree*, INSIDE HIGHER EDUC. (Feb. 19, 2008), <https://perma.cc/VBY6-RTMC> ("[P]utting athletics oversight in the hands of presidents was supposed to make them 'more inclined to control the beast, . . . [b]ut presidents have largely been unable to stop the enterprise from careering out of control.'").

137. See Osborn & Weight, *supra* note 107, at 223.

138. See Jason Belzer et al., *How do Athletic Directors and University Presidents Manage to Get Along?*, FORBES (Jan. 26, 2016, 12:15 PM), <https://perma.cc/EZ39-WWXH>.

Further, as exemplified by Rutgers' men's basketball Coach Mike Rice,<sup>139</sup> presidents may haphazardly support half-truths in an abuse scandal.<sup>140</sup>

Presidents' financial interests aggravate oversight failures.<sup>141</sup> In 2022, the average Power Five conference athletic department generated \$134.4 million in revenue.<sup>142</sup> That revenue, generated from ticket sales and media contracts, depends on successful programs.<sup>143</sup> A program's success hinges on a coach's ability to recruit top talent and maintain a winning team.<sup>144</sup> Thus, the financial rewards from a championship-winning coach often lead presidents to overlook abuse within the coach's program.<sup>145</sup>

Further, presidents manipulate internal investigations to their advantage when pressured to examine complaints.<sup>146</sup> Institutional leaders control not only the investigation's scope,<sup>147</sup> but also which details of the investigation to share publicly.<sup>148</sup> Consequently, presidents can easily disclaim the presence of misconduct, support the coach, and avoid public scrutiny.<sup>149</sup>

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139. See Don Van Natta Jr., *Inside Rutgers' 17-day Investigation*, ESPN (Apr. 5, 2013, 8:06 PM), <https://perma.cc/JDV2-VQR5> (explaining that Rutgers fired Coach Rice after practice videos depicted him verbally berating players with vulgar language, including homophobic slurs, shoving players, and throwing and kicking basketballs at players).

140. See Grasgreen, *supra* note 130 (stating that AD Tim Perneti failed to show President Robert Barchi the video of Rice for three months, but President Barchi "endorsed" AD Perneti's three game suspension and \$50,000 fine).

141. See *Why Does Scandal Continue to Occur in College Sports?*, INTELLISPORT ANALYTICS (Aug. 17, 2023, 3:08 PM) [hereinafter *Why Does Scandal Continue?*], <https://perma.cc/5MXR-7VRL>.

142. See Steve Berkowitz, *SEC, Big Ten Each Top \$2 Billion in Athletic Department Revenue, Outpacing Power Five Foes*, USA TODAY, <https://perma.cc/X4ZU-4497> (June 14, 2023, 9:05 AM) (listing SEC, Big Ten, ACC, Pac-12, and Big 12 as the Power Five conferences).

143. See Roberta Holland, *What's the Value of a Win in College Athletics?*, WORKING KNOWLEDGE: HARV. BUS. SCH. (Oct. 26, 2015), <https://perma.cc/K872-R5VV>; Kendall Baker, *How College Sports Make Money*, AXIOS (Apr. 16, 2020), <https://perma.cc/Y6CA-43L2>.

144. See Martin J. Greenburg & Jay S. Smith, *A Study of Division I Assistant Football and Mens' Basketball Coaches' Contracts*, 18 MARQ. SPORTS L. REV. 25, 26 (2007) ("Coaches are vital to the success of the athletic program in every aspect.").

145. See *id.*

146. See COLLEGE ATHLETE PROTECTION, *supra* note 23, at 30.

147. See, e.g., Don Van Natta Jr., *Video Shows Mike Rice's Ire*, ESPN (April 2, 2013, 2:31 PM), <https://perma.cc/Z2G6-JF4Q> (explaining that there was no evidence that Rutgers AD Perneti interviewed players or staff or examined other evidence during his initial investigation of Coach Rice).

148. See Strauss, *supra* note 135 (explaining that after University of Nebraska softball Coach Rhonda Revelle's reinstatement, the AD denied public questions or viewing, including the team, of the human resource report investigation allegations of verbal abuse, intimidation, and disregard of injuries).

149. See *id.* (reinstating Coach Revelle after the investigation).

Sometimes, when student-athletes speak publicly about coaching abuse, institutional concealment dissipates.<sup>150</sup> Institutions must fire the coach and bear the financial burden of external investigations or contract buy-outs.<sup>151</sup> Institutions rarely face repercussions, however.<sup>152</sup> When independent firms investigate, institutional integrity is an illusion.<sup>153</sup> Presidents often choose affable firms to investigate so inquiries can shift away from uncovering instances of wrongdoing.<sup>154</sup> The final result of these biased investigations find no fault on the institution or the coach.<sup>155</sup> Even if the findings warrant action, institutions maintain their reputations.<sup>156</sup> Coaches may resign quietly, allowing their careers to continue without consequence and their institutions to avoid media attention.<sup>157</sup>

Institutional reluctance to structural reform most significantly contributes to coaching abuse.<sup>158</sup> ADs know that open-door policies are ineffective in preventing abuse, yet they refuse to implement robust reporting systems.<sup>159</sup> For example, Rutgers athletics has yet to implement formal complaint procedures despite abuse scandals involving former

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150. See Grasgreen, *supra* note 130.

151. See Scott M. Reid, *UC Berkeley Fires Swim Coach Teri McKeever*, ORANGE COUNTY REG. (Feb. 16, 2023, 1:53 PM), <https://perma.cc/H4TJ-VPN2> (stating that the eight-month independent investigation cost UC Berkeley approximately two million dollars); see also Brendan Brightman, *Rutgers Pays More than \$20 M. to Fired Coaches, Administrators in Past Decade*, DAILY TARGUM (Oct. 2, 2019, 4:41 AM), <https://perma.cc/9HJZ-N7XF> (calculating losses of approximately three million dollars for institutions involved in abuse scandals).

152. See *Why Does Scandal Continue?*, *supra* note 141.

153. See COLLEGE ATHLETE PROTECTION, *supra* note 23, at 9.

154. See, e.g., Scott M. Reid, *Swimmers Voice Concerns About Focus of Cal's McKeever Probe*, OC REG. (Jan. 13, 2023, 12:31 PM), <https://perma.cc/NZX3-6VY5> (describing conflict of interests concerns because a chair of the firm investigating McKeever and UC athletics was an alumni and leading fundraiser).

155. See *id.* (explaining that questions focused on “damage control” versus the events under McKeever).

156. See COLLEGE ATHLETE PROTECTION, *supra* note 23, at 9.

157. See, e.g., Dave Skretta, *Texas Tech Coach Adams Resigns After Insensitive Comments*, AP NEWS (Mar. 9, 2023, 12:18 AM), <https://perma.cc/5WF6-TKZZ>; see also, e.g., Reice Shipley, *College Basketball Team Hires Controversial Coach*, COMEBACK (July 14, 2023), <https://perma.cc/RZE9-7VGQ> (explaining that former Texas Tech Men's basketball Coach Mark Adams was hired by East Carolina University less than a year after Adams resigned amidst allegations for making racially insensitive comments to a player); see also Skretta, *supra* note 157 (explaining that Texas Tech dismissed Adams's comment as “unintentional” when “encouraging the student-athlete . . . and referenc[ing] Bible verses about workers, teachers, parents, and slaves serving their masters”).

158. See Asimov, *supra* note 132 (stating that women's soccer Coach Neil McGuire is still the present coach after abuse became public in 2020).

159. See MCKEEVER INVESTIGATION, *supra* note 101, at 269 (stating that swimmers did not tell AD Knowlton and Executive Senior Associate AD Simon-O'Neill about McKeever's abuse until finishing swimming due to conflicts of interests).



men's basketball Coach Mike Rice (2012),<sup>160</sup> swimming Coach Petra Martin (2017),<sup>161</sup> and softball Coaches Kristen Butler and Marcus Smith (2019).<sup>162</sup> Similarly, institutions resist independent review and public disclosure despite criticism of internal investigations.<sup>163</sup> UC Berkeley disregarded abuse and rejected investigations against Coach McKeever, just as it did regarding allegations against women's soccer Coach Neil McGuire.<sup>164</sup> In short, institutions recognize the ongoing student-athlete abuse but continue to maintain systems that insulate abusive coaches.<sup>165</sup>

#### *D. Maryland Football and the Death of Jordan McNair*

The death of University of Maryland (UMD) football player Jordan McNair exemplifies the tragedy that results when an institution's systematic dysfunction goes too far.<sup>166</sup> Jordan McNair was a 19-year-old offensive lineman on the UMD football team.<sup>167</sup> On May 29, 2018, McNair suffered a heat stroke during preseason conditioning and passed away fourteen days later, on June 13, 2018.<sup>168</sup> UMD ordered an independent investigation of athletic training policies to evaluate the events preceding McNair's death.<sup>169</sup>

The investigation revealed that McNair's death was preventable.<sup>170</sup> UMD failed to train the staff responsible for implementing the Sports

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160. See Don Van Natta Jr., *supra* note 139.

161. See David Rieder, *Rutgers Fires Head Women's Swimming Coach Petra Martin*, SWIMMING WORLD MAG. (Nov. 16, 2017, 7:54 PM), <https://perma.cc/ZLR3-JKM6> (explaining that Coach Martin resigned amid allegations of body shaming, verbal abuse, and demanding players stop using prescribed medication for mental issues).

162. See Keith Sargeant & Matthew Stanmyre, *Rutgers Softball Players Say They Were Physically, Emotionally Abused by Wife-Husband Coaching Team and School did Nothing*, N.J. (Apr. 27, 2024, 4:02 AM), <https://perma.cc/D9KW-XTSE> (explaining that coaches used conditioning drills as punishment, intentionally hit players with balls at practice, and made inappropriate comments about players' bodies); see also RUTGERS UNIVERSITY-NEWARK STUDENT-ATHLETE HANDBOOK 2021-22 2 (2021) (demonstrating that student-athlete grievance procedures remain as an open-door policy without anonymity).

163. See Asimov, *supra* note 132.

164. See *id.* (highlighting that athletic department and campus offices did not follow investigation protocol and the UC system president's office's vague response supporting university officials).

165. See Anzidei et al., *Coaching Abuse Pervasive in Pro, College Athletics. What's Being Done to Address it?*, DEMOCRAT & CHRONICLE (Mar. 23, 2023, 3:00 AM), <https://perma.cc/8W6Y-QSMC>.

166. See Crabtree-Hannigan, *supra* note 1.

167. See *id.*

168. See *id.*

169. See MCNAIR INVESTIGATION, *supra* note 2, at 4.

170. See *id.* at 4; Shaffer & Klingaman, *supra* note 2 (explaining how McNair's death was preventable if proper heat stroke protocol would have been followed).

Medicine Emergency Action Plan (“EAP”) that applied to McNair.<sup>171</sup> The training staff failed to follow procedures for recognizing and addressing a severely escalating heat-related illness.<sup>172</sup> Notably, the training staff allowed an hour and a half to elapse between the onset of McNair’s symptoms and McNair’s departure to the hospital.<sup>173</sup>

Further, the staff did not document the incident according to UMD’s Athletics Critical Incident Guidelines.<sup>174</sup> No records existed to show when the training staff notified Critical Incident Management Team members or UMD officials of McNair’s medical emergency.<sup>175</sup> Concerningly, information reported to UMD’s legal counsel, athletic director, and senior administration did not accurately reflect the delayed care McNair received.<sup>176</sup>

Based on the investigation, UMD placed the athletic staff on administrative leave.<sup>177</sup> The same day, ESPN published a report exposing the “toxic culture” in UMD’s football program.<sup>178</sup> The report described the program’s environment as one “based on fear and intimidation,” in which coaches belittled and singled out players.<sup>179</sup> The program’s culture centered on a no-quit mentality and targeted players if they came across as weak.<sup>180</sup>

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171. See MCNAIR INVESTIGATION, *supra* note 2, at 18–19 (stating that there was no documentation of EAP training or practice for staff, and interviews of assistant strength coaches revealed no recall in EAP training).

172. See *id.* at 8, 30–31.

173. See *id.* at 14, 30–31 (explaining that there is a “significant increase in organ damage, morbidity, and mortality after 30 minutes” when cooling is delayed for heat-related illnesses).

174. See *id.* at 18 (explaining that the meeting was not conducted until June 11, 2018).

175. See *id.* at 18–19 (stating that required members include the Deputy Director of Athletics/ Chief Operating Office, University General Counsel, or University Counseling Center Director were notified about McNair’s situation and that university officials include University Legal Counsel, senior administration, and athletic director).

176. See *id.* at 66 (stating that video review of May 29, 2018 confirmed the misrepresentations on McNair’s care).

177. See Heather Dinich & Adam Rittenberg, *Maryland Puts Trainers, Strength Coach on Leave*, ESPN (Aug. 11, 2018, 9:57 AM), <https://perma.cc/GFC7-9JPH> (clarifying that the unnamed staff put on administrative leave August 10, 2018, included Coach Court).

178. See *The Inside Story of a Toxic Culture at Maryland Football*, ESPN (Aug. 10, 2018, 6:30 PM), <https://perma.cc/6L3F-ZQGQ> (explaining that the report came from interviews with current players, former players and staff, and other individuals close to the Maryland football program).

179. See *id.* (stating that former players explained that unhealthy eating habits were endorsed, players were verbally belittled for passing out during drills, and their masculinity was mocked).

180. See *id.* (stating that a former player described a cultural problem that was highlighted by Jordan McNair’s death).

The report revealed that Head Strength and Conditioning Coach Rick Court carried out the abuse, and Head Coach DJ Durkin enabled it.<sup>181</sup> Subsequently, UMD placed Coach Durkin on administrative leave to conduct a second independent investigation on the football program's alleged toxic culture.<sup>182</sup>

The investigation concluded the football program “did not have a ‘toxic culture.’”<sup>183</sup> Still, the lack of oversight and accountability within UMD created a culture where inappropriate conduct went undetected and players feared to speak out.<sup>184</sup>

Inappropriate conduct reported in the investigation included physical, verbal, and emotional abuse.<sup>185</sup> Coach Court compelled a player with appetite-related health issues to eat until he vomited.<sup>186</sup> Coach Court degraded and humiliated players by mocking their masculinity and body shaming them if they could not complete a workout.<sup>187</sup> Injuries were dismissed as “fake” because “under Durkin . . . [y]ou weren’t injured unless you couldn’t walk.”<sup>188</sup> While Coach Court inflicted most of the alleged abuse, Coach Durkin had partial responsibility for failing to remediate Coach Court’s behavior.<sup>189</sup>

The investigation emphasized the connection between UMD’s inadequate authority and reporting structure and the persistent abusive

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181. *See id.*

182. *See* Wallace D. Loh, *Loh, Evans Apologizes to McNair’s Parents*, M.D. TODAY (Aug. 14, 2018), <https://perma.cc/824C-RZ7V>; *see also* Letter from Director of Athletics Damon Evans, TERRAPIN ATHLETICS (Aug. 11, 2018 5:20 PM), <https://perma.cc/Z27W-ZUZH> (stating that Head Coach Durkin was placed on administrative leave for the football program’s culture to be investigated).

183. MARYLAND FOOTBALL INVESTIGATION, *supra* note 11, at 11 (explaining that “toxic” was defined as “extremely harsh, malicious, or harmful,” and the culture was not toxic because “[t]here was no uniform rejection of Maryland’s coaching staff, and no uniform rejection of the treatment of players, by any of the groups of stakeholders interviewed”).

184. *See id.* at 4–12.

185. *See id.* at 7–8.

186. *See id.* at 83–84 (questioning whether the player’s vomiting was the result of Coach Court’s mistreatment). *But see* *The Inside Story of a Toxic Culture at Maryland Football*, *supra* note 178 (discussing multiple occasions where Coach Durkin used food as a form of punishment).

187. *See id.* 106–07 (stating that Coach Court commonly called players “p\*\*\*\*\*” and “b\*\*\*\*\*” during training sessions); *id.* at 82 (stating that an overweight player would be given candy bars during workouts and other players were ridiculed over their weight).

188. *See id.* at 137 (explaining that “it was ‘never an option’ not to practice”).

189. *See id.* at 9 (explaining Coach Durkin’s responsibility for Coach Court’s behavior because “[i]t is a head coach’s responsibility to establish and maintain a healthy positive environment for his players, and to hire coaches and staff who support these efforts.”).

conduct.<sup>190</sup> Coach Court was “effectively accountable to no one.”<sup>191</sup> No athletic department officials oversaw Coach Court or held him to UMD’s standards.<sup>192</sup>

Likewise, as a first-time head coach, Coach Durkin never received training on NCAA, Big 10, or UMD policy compliance.<sup>193</sup> Coach Durkin reported to AD Evans and had a direct relationship with AD Anderson.<sup>194</sup> However, neither AD Evans nor AD Anderson provided “consistent or regular oversight” over Coach Durkin or the football program.<sup>195</sup>

Additionally, UMD leaders failed to conduct a Performance Review and Development (“PRD”) for Coach Durkin or Coach Court during their tenure.<sup>196</sup> UMD President Wallace Loh did not know about the problems with the football program.<sup>197</sup> However, President Loh had a weak relationship with his direct report, AD Anderson.<sup>198</sup>

Finally, the investigation highlighted that neglected complaints resulted from improper reporting procedures.<sup>199</sup> Football players refused to confront Coach Durkin about Coach Court for fear of “retribution or dismissal of their concerns.”<sup>200</sup>

The inadequate response by athletic administrators further legitimized football players’ fears.<sup>201</sup> For example, AD Evans did not act when a football player reported that Coach Court’s behavior made him feel “less than human.”<sup>202</sup> AD Evans did not preserve the complaint and later denied recollection of the event.<sup>203</sup>

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190. *See id.* at 5.

191. *Id.* at 154; *see also id.* at 48 (explaining that Coach Court’s contract designated Coach Durkin as Court’s direct line of report, but Durkin believed Court reported to the Associate AD, as occurred with previous strength and conditioning coaches).

192. *See id.* at 49.

193. *See* MARYLAND FOOTBALL INVESTIGATION, *supra* note 11, at 40–42 (statement of Jewel Washington, Chief, Univ. Hum. Res.) (explaining that first time head coaches normally go through “best practices” training and receive guidance from Athletic Directors and other compliance staff).

194. *See id.* at 43.

195. *Id.* (explaining that weekly meetings between AD deputy Evans and Coach Durkin did not occur, nor did AD walk throughs of practices).

196. *See id.* at 154; *see also id.* at 146 (explaining that the AD is required to provide the University President with annual PRD evaluations of coaching staff “to provide . . . accountability for University employees”).

197. *See id.* at 51.

198. *See id.* at 29, 34 (explaining that Anderson had a practice of “freezing out” staff by stopping communications with that staff member); *see also id.* at 32, 28 (explaining that AD communications with the President primarily centered around general athletic matters).

199. *See id.* at 11–13.

200. *Id.* at 12–13 (stating some players chose to leave the football program over treatment they endured instead of speaking to Durkin).

201. *See id.* at 49.

202. *Id.*

203. *See* MARYLAND FOOTBALL INVESTIGATION, *supra* note 11, at 49.

Similarly, reports to senior administrators failed.<sup>204</sup> In 2016, President Loh received an anonymous email alleging the mistreatment of athletes by Coach Durkin and his staff and the enablement of misconduct by AD Anderson.<sup>205</sup> President Loh forwarded the email to AD Anderson, but AD Anderson did not subsequently investigate the complaint, supervise Coach Durkin, or update President Loh on the complaint's factuality.<sup>206</sup> No administrator gave Coach Durkin notice of the complaint.<sup>207</sup> President Loh and his Chief of Staff denied receiving the anonymous email until it was published in 2018.<sup>208</sup>

Ramifications followed the publication of the second investigation.<sup>209</sup> President Loh retired after the 2018-19 academic year.<sup>210</sup> UMD fired Coach Durkin without cause after public outcry against his initial reinstatement.<sup>211</sup>

#### *E. Moving to External Oversight: Maryland's Law*

UMD attempted to implement internal safeguards for student-athletes after the investigations.<sup>212</sup> However, state congressmen no longer trusted internal controls to protect student-athletes.<sup>213</sup>

As a result, Maryland legislators introduced House Bill 876 in 2019.<sup>214</sup> The events at UMD demonstrate how administrative failures to safeguard student-athletes reinforce a culture that is tolerant of abuse.<sup>215</sup>

204. *See id.* at 50.

205. *See id.*

206. *See id.* at 50–53.

207. *See id.* at 56.

208. *See id.* at 51–52.

209. *See* Diamondback Staff, *UMD's DJ Durkin, Damon Evans will Keep Jobs; Wallace Loh to Retire in June*, DIAMONDBACK (Oct. 30, 2018), <https://perma.cc/79FN-B299>.

210. *See id.* (stating that Loh was required by the Board of Regents to reinstate Durkin to keep his own position).

211. *See* *Justice for Jordan Rally*, FACEBOOK, <https://perma.cc/GRF2-T5UL> (last visited June 1, 2024) (protesting UMD's reinstatement of Coach Durkin after McNair's death); *see also* Paul Myerberg, *Maryland Fires Football Coach DJ Durkin After Massive Backlash Over his Reinstatement*, USA TODAY (Oct. 31, 2018, 11:42 PM), <https://perma.cc/YYC4-LKS5> (explaining that University of Maryland paid Coach Durkin \$5.07 million remaining on his \$7.8 million deal because he was fired without cause).

212. *See* Liam Farrell, *Student-Athletes Get Online Tool to Report Concerns*, M.D. TODAY (Aug. 28, 2018), <https://perma.cc/9DEP-FAE5> (explaining that Maryland created a message system for student-athletes to share concerns with an athletics administrator).

213. *See* Ryan, *supra* note 28 (stating that State Delegate Shelly Hettleman wants to “make sure that students can be safe” after the Maryland football investigations highlighted athlete bullying in the athletic department).

214. *See* H.B. 876, 2019 Leg., 439th Sess. (Md. 2019).

215. *See* *Higher Education: Policy on Student Concerns About Athletic Programs and Activities*, M.D. GEN. ASSEMBLY: APPROPRIATIONS COMM. 29:34-29:51 (Feb. 2, 2019) [hereinafter *Maryland Hearing*] (statement of Del. Shelly Hettleman, Member, Appropriations Comm.), <https://perma.cc/C5MZ-W3LK>.

Before Jordan McNair's death, UMD student-athletes had to report concerns directly to a coach or athletic administrator.<sup>216</sup> After McNair's death, UMD created a formal reporting system, but it barely improved the original open-door policy.<sup>217</sup> Retaliation concerns remained because student-athletes did not have anonymity.<sup>218</sup> Moreover, the new policy did not eliminate biases, which prioritized financial and reputational interests over student-athlete well-being, because athletic administrators still oversaw complaints.<sup>219</sup>

House Bill 876 intends to amend those concerns.<sup>220</sup> The proposed law requires Maryland institutions to develop a confidential reporting system for student-athletes, whereby administrators outside the athletic department are responsible for the complaints.<sup>221</sup>

The Bill was influenced Townson University's complaint process using the RealResponse platform.<sup>222</sup> Townson University maintains a confidential complaint system overseen by administrators outside the athletic department.<sup>223</sup> The AD resolves minor complaints, but the appropriate resource office handle severe complaints.<sup>224</sup> Relevant athletic administrators receive complaint information for further inquiry, but coaching staff do not.<sup>225</sup>

The Bill recognizes the need for policy and cultural change to protect athletes.<sup>226</sup> Increasing independent oversight of athletic departments

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216. *See id.* at 36:04-36:33 (statement of Jonathan Allen, Student Body President, Univ. Md.).

217. *See id.* at 36:36-36:40 (statement of Jonathan Allen, Student Body Pres., Univ. Md.).

218. *See id.* at 36:55-37:08 (statement of Jonathan Allen, Student Body Pres., Univ. Md.) (explaining reports were connected to the student-athlete's university email).

219. *See id.* (statement of Jonathan Allen, Student Body Pres., Univ. Md.).

220. *See id.* at 30:28-30:41 (statement of Del. Shelly Hettleman, Member, Appropriations Comm.).

221. *See id.* at 31:06-31:46 (statement of Del. Shelly Hettleman, Member, Appropriations Comm.) (suggesting that at the time of the Bill's introduction, no institution was mandated to have a clear mechanism for student-athletes to report their concerns in a confidential manner).

222. *See id.* at 30:13-30:18 (statement of Del. Shelly Hettleman, Member, Appropriations Comm.); 33:18-33:22 (statement of Tim Leonard, Athletic Dir., Townson Univ.); *see also* REAL RESPONSE, <https://perma.cc/7M77-BZWN> (last visited Nov. 10, 2023) (explaining that RealResponse is a platform used for confidential communication, survey assessments, and related data tracking).

223. *See Maryland Hearing, supra* note 215, at 41:34-41:52 (statement of Tim Leonard, Athletic Dir., Townson Univ.).

224. *See id.* at 33:22-34:32, 41:34-41:52 (statements of Tim Leonard, Athletic Dir., Townson Univ.) (explaining that resource offices include the Office of Inclusion and Equity, Office of Human Resources, or the General Counsel's Office).

225. *See id.* (statement of Tim Leonard, Athletic Dir., Townson Univ.) (explaining that coaching staff are notified of complaints by athletic administrators).

226. *See id.* at 35:55-36:02 (statement of Jonathan Allen, Student Body Pres., Univ. Md.).

accomplishes this change.<sup>227</sup> Initially, the Bill faced scrutiny for demoting the athletic compliance office and potentially weakening the competitive atmosphere of college sports.<sup>228</sup> However, the Bill addresses reports beyond the compliance office's scope, such as coaching abuse.<sup>229</sup> Athletic compliance offices handles reports regarding NCAA and conference rules.<sup>230</sup> Further, proponents of the Bill explained that the competition in intercollegiate athletics remains the same, but the internal culture has changed.<sup>231</sup> Student-athletes still compete at an elite level, but the Bill ensures that high-level performance is accomplished with respect and dignity.<sup>232</sup>

The Bill ultimately received bipartisan support and Md. Educ. Code § 11-601 passed on July 1, 2019.<sup>233</sup> Maryland closed a regulatory gap that allowed institutions to silence and tolerate abuse.<sup>234</sup> The law created institutional accountability and retaliatory protection for student-athletes through a mandated policy.<sup>235</sup>

First, institutions must have a confidential reporting system that administrators outside the athletic department oversee.<sup>236</sup> ADs cannot use limited internal oversights to easily confine alleged abuse to the department.<sup>237</sup> Further, the reporting system limits an institution's ability to disclaim knowledge of misconduct.<sup>238</sup>

Second, institutions must submit an annual report to the Higher Education Commission reflecting the number of student-athletes who utilized the reporting system. Additionally, institutions must summarize the submissions to the Senate Education, Energy, & Environment Committee and the House Appropriations Committee.<sup>239</sup> Institutions must also report any policy changes to all three bodies.<sup>240</sup> The state provides

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227. *See id.*

228. *See id.* at 49:06–50:08 (statement of Antonino D. Mangione, Member, Appropriations Comm).

229. *See id.* at 46:50–47:38, 48:00–48:30 (statements of Tim Leonard, Athletic Dir., Townson Univ. & Olivia Lubarksy, Pres., Townson Univ. Student Athlete Advisory Comm.).

230. *See id.* at 45:49–46:32 (statement of Del. Shelly Hettleman, Member, Appropriations Comm.).

231. *See id.* at 50:33–52:07 (statement of Tim Leonard, Athletic Dir., Townson Univ.).

232. *See id.*

233. *See* MD. CODE ANN., EDUC. § 11-1601 (West 2019).

234. *See* RadioEd, *The Ted Lasso Effect: Stamping out Hazing in Athletics and Building Strong Team Culture*, UNIV. DENV.: RADIOED, 20:19 (Apr. 25, 2023), <https://perma.cc/KNE9-P53P> (interview of Brian Gearity).

235. *See* Ryan, *supra* note 28; *see also* *Maryland's New Law*, *supra* note 27.

236. *See* EDUC. § 11-1601(b)(1)(i)–(ii).

237. *See, e.g., supra* notes 201–203 and accompanying text.

238. *See, e.g., supra* notes 204, 208 and accompanying text.

239. *See* EDUC. § 11-1601(e)(1)–(2).

240. *See id.* § 11-1601(d)(2).

checks and balances by monitoring institutional compliance with the policy.<sup>241</sup>

Lastly, institutions must have a policy prohibiting retaliation against student-athletes who use the reporting system.<sup>242</sup> This policy ensures coaches cannot remove a student-athlete from the team or take away their scholarship without facing consequences.<sup>243</sup>

### III. ANALYSIS

While the benefits of Maryland's law are evident, issues around regulating intercollegiate athletics remain.<sup>244</sup> First, college athlete advocates agree that intercollegiate athletics needs better independent oversight, but dispute which body should have this authority.<sup>245</sup> Second, Maryland's law is an excellent start to protecting student-athletes, but legislatures should implement additional reform to hold institutions accountable for providing such protection.<sup>246</sup>

This Part will first discuss why states should oversee intercollegiate athletics rather than the federal government.<sup>247</sup> This Part will then suggest how states can reform laws that protect student-athletes and regulate institutions.<sup>248</sup>

#### A. Keeping Regulation at the State Level

Maryland exemplifies the use of state power to curb abuse in college sports.<sup>249</sup> However, instead of following Maryland's lead, college sports affiliates push for federal legislation.<sup>250</sup> Congress has begun efforts to regulate intercollegiate athletics in Name, Image, and Likeness (NIL), and affiliates have considered these bills the legislative vehicle for regulating coaching abuse.<sup>251</sup>

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241. See Arnout Geeraert, *A Rational Choice Perspective on Good Governance in Sport: The Necessity of Rules of the Game*, in GOOD GOVERNANCE IN SPORT: CRITICAL REFLECTION 15, 23 (Arnout Geeraert & Frank van Eekeren eds., 2021) (explaining that separation of powers for sport governance includes "independent bodies with judicial or oversight functions").

242. See EDUC. § 11-1601(b)(iii).

243. See *Maryland's New Law*, *supra* note 27.

244. See *State of College Sports: What Should the Role of the NCAA be in the Future?*, ON3 (Dec. 5, 2023), <https://perma.cc/K747-J2GR>.

245. See, e.g., Morial, *supra* note 26.

246. See Lisa A. Kihl, *Sport Integrity Systems: A Recommended System for Promoting and Safeguarding Sport Integrity*, in GOOD GOVERNANCE IN SPORT: CRITICAL REFLECTION 168, 175 (Arnout Geeraert & Frank van Eekeren eds., 2021).

247. See discussion *infra* Section III.A.

248. See discussion *infra* Section III.B.

249. See *Maryland's New Law*, *supra* note 27.

250. See Morial, *supra* note 26.

251. See Kristi Dosh, *4 New Federal NIL Bills have been Introduced in Congress*, FORBES (July 29, 2023, 9:31 AM), <https://perma.cc/X2TX-9K9D>.



NIL bills, seeking to protect more than student-athlete economic freedom, apply health and safety provisions narrowly to sports-related injuries.<sup>252</sup> Only one bill aims to establish standards to prevent “serious injury . . . mistreatment[,] and abuse, and death.”<sup>253</sup> The bill includes sexual misconduct and interpersonal violence, but it is unknown if the term “interpersonal violence” would be construed broadly to cover the various forms of coaching abuse student-athletes experience.<sup>254</sup>

The overarching goal of NIL federal legislation may partially explain the lack of legislative coverage on abuse.<sup>255</sup> NIL legislation intends to replace the patchwork of state laws with one equitable and easy to follow law.<sup>256</sup> The law aims to prevent recruiting advantages based on an institution’s location in a state with relaxed NIL laws.<sup>257</sup> One law would also make compliance easier for student-athletes transferring institutions or for businesses entering into deals within different states.<sup>258</sup>

While a federal law unifying standards for coaching abuse in college sports seems advantageous, state legislation is superior.<sup>259</sup> State regulation can do more than set standards; it can provide active scrutiny of how athletic programs operate.<sup>260</sup> Further, states’ localized approaches balance public and institutional interests better than the detached oversight of federal regulation.<sup>261</sup>

Additionally, Congress has shown little interest in regulating student-athlete abuse, which predates NIL-related issues.<sup>262</sup> Thus, intercollegiate abuse will likely not fall under Congress’s purview.<sup>263</sup> Nevertheless, codification of the U.S. Center for SafeSport alludes to Congress’s limited

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252. See Protecting Athletes, Schools, and Sports Act. S. 2495, 118th Cong. § 7(a)(2)-(3) (2023).

253. COLLEGE ATHLETES PROTECTION AND COMPENSATION ACT OF 2023 § 5(a)(1) (Draft 2023).

254. See *id.* at § 5(a)(3).

255. See Ellis Marder, *The Implications of Passing a Federal NIL Bill*, GREENSPOON MARDER LLP (Mar. 13, 2023), <https://perma.cc/M6P8-P4SD>.

256. See *id.*

257. See *id.*

258. See *id.*

259. See Brian Pusser, *The Role of the State in the Provision of Higher Education in the United States*, 12 AUSTL. UNIVS. REV. 24, 25 (2000) (stating that the state serves as a “provider, subsidizer, and regulator”).

260. See Houston D. Davis, *States and Education: State Governments in Higher Education*, STATEUNIVERSITY, <https://perma.cc/5Q4N-ZPZ9> (last visited Dec. 28, 2023).

261. See *id.*

262. See *Athletes and Innovators: Analyzing NIL’s Impact on Entrepreneurial Collegiate Athletes: Hearing Before the H. Comm. on Small Bus.*, 118th Cong. 1 (2023) [hereinafter *NIL Hearing*] (written statement of Madeline Salamone, Vice Pres., College Football Players Ass’n).

263. See *id.* (discussing lawmakers’ continued ignorance towards college athlete abuse).

impact in protecting student-athletes.<sup>264</sup> SafeSport was established in 2017 to prevent abuse in the U.S. Olympic and Paralympic movement.<sup>265</sup> But SafeSport's shortcomings have curtailed its achievement of this goal.<sup>266</sup>

First, SafeSport, based in Colorado, lacks sufficient resources to cover over ten million athletes nationwide.<sup>267</sup> SafeSport receives approximately 150 new complaints weekly, a number expected to rise.<sup>268</sup> Despite its \$23 million annual budget and 60 staffed investigators, SafeSport CEO Ju'Riese Colón has acknowledged that it lacks sufficient resources to handle the ever-growing caseload.<sup>269</sup>

Likewise, SafeSport's poor case management is apparent.<sup>270</sup> SafeSport investigations can span years before resolving, and few updates occur throughout the lengthy process.<sup>271</sup> Since its inception, SafeSport formally resolved less than 15% of its investigated cases.<sup>272</sup> More troubling, 38% of cases resulted in "administrative closure," meaning SafeSport provided no findings, explanations, or sanctions.<sup>273</sup>

Federal regulation of coaching abuse in college sports would likely suffer SafeSport's deficiencies.<sup>274</sup> While the number of student-athletes is negligible compared to that of the U.S. Olympic and Paralympic movement, the resources provided would not likely exceed SafeSport's, nor would they be sufficient to carry out administrative duties.<sup>275</sup> The federal agency responsible for managing student-athlete abuse would likely flounder under its caseload and leave too many cases uninvestigated or erroneously dismissed.<sup>276</sup>

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264. See Protecting Young Victims from Sexual Abuse and Safe Sport Authorization Act of 2017, Pub. L. No. 115-126, § 202, 132 Stat. 318, 320–21 (2018).

265. See Eddie Pells, *Formed to Combat Olympic Sex Abuse, SafeSport Center is Struggling 6 Years After Opening*, AP NEWS, (July 27, 2023, 10:34 AM), <https://perma.cc/Y5WU-GCTQ>.

266. See *id.*

267. See Nancy Armour, *U.S. Center for SafeSport was Created to Protect Athletes from Abuse. But is it Working?*, USA TODAY (May 22, 2023, 4:48 PM), <https://perma.cc/95T3-SJV5>; see also Pells, *supra* note 265.

268. See Pells, *supra* note 265.

269. See Armour, *supra* note 267.

270. See *id.*

271. See *id.* (stating that SafeSport currently has 1,000 cases open and 28% are older than one year).

272. See Pells, *supra* note 265.

273. See *id.*

274. Cf. Rachel Axon, *What Happens if a School Doesn't Comply with Title IX? Not a Whole Lot*, USA TODAY, <https://perma.cc/VS9Q-2Q7Z> (Dec. 22, 2022, 4:39 PM) (analyzing problems with federal investigations of institutional noncompliance with Title IX).

275. See Pells, *supra* note 265 (stating that out of SafeSport's \$23 million budget, the U.S. government funds \$2.3 million and the remaining \$20 million comes from the individual sports federations in the USPOC).

276. See Axon, *supra* note 274.

### B. *Strengthening Maryland's Law*

State-by-state implementation of a law like Maryland's is therefore crucial, but states should enact even greater measures to protect student-athlete welfare on and off the playing field.<sup>277</sup> To protect student-athletes satisfactorily, new legislation must mandate greater independent oversight and stronger anti-retaliation safeguards.<sup>278</sup> The recommendations below model the Fair Labor Association (FLA) and other regulatory practices.<sup>279</sup>

The FLA is a non-profit, non-governmental organization aimed at improving labor practices internationally.<sup>280</sup> FLA members must comply with the FLA's Code of Conduct, and the FLA monitors member adherence through its stringent compliance regime.<sup>281</sup> Modeling key features of the FLA in state legislation will protect student-athletes by enforcing institutional compliance and increasing accountability.<sup>282</sup>

#### 1. Enforce an Athletic Department Code of Conduct

Maryland could improve its student-athlete reporting policy by requiring institutions to maintain an athletic department code of conduct.<sup>283</sup> Currently, institutions do not universally require athletic departments to develop specific codes of conduct, and current institutional codes rarely apply in the athletic context.<sup>284</sup> The FLA's code of conduct establishes behavioral standards for its members,<sup>285</sup> and the FLA can require members to remediate code violations.<sup>286</sup>

Similarly, states should require athletic department codes of conduct that outline athletic personnel's ethical and professional standards.<sup>287</sup> The

277. See Kihl, *supra* note 246, at 176 (explaining proper accountability mechanisms for sport integrity systems).

278. See *id.*

279. See *About the Fair Labor Association*, FAIR LABOR, <https://perma.cc/5M7V-9HHQ> (last visited Dec. 30, 2023).

280. See *Fair Labor Accreditation*, FAIR LABOR, <https://perma.cc/2RXA-4SQV> (last visited Dec. 30, 2023) (explaining FLA's compliance is to "prevent abuses, ensure . . . compliance, and remediate violations").

281. See FAIR LABOR ASS'N, CHARTER DOCUMENT 21–29 (2021) [hereinafter FLA CHARTER DOCUMENT].

282. See FAIR LABOR ASS'N, WORKPLACE CODE OF CONDUCT AND COMPLIANCE BENCHMARKS 8 (2020) [hereinafter FLA CODE OF CONDUCT].

283. Compare Md. CODE ANN., EDUC. § 11-1601(b)(1) (West 2019) (requiring solely a student-athlete reporting mechanism), with MARYLAND FOOTBALL INVESTIGATION, *supra* note 11, at 186-87 (recommending UMD implement an athletic department code of conduct).

284. See ATHLETIC GOVERNANCE ORGANIZATION AND INSTITUTIONAL RESPONSIBILITIES, *supra* note 24, at 13 (connecting institution standard inapplicability to athletic department isolation and the unique student-athlete/coach relationship).

285. See FLA CODE OF CONDUCT, *supra* note 282, at 1.

286. See FLA CHARTER DOCUMENT, *supra* note 281, at 29.

287. ATHLETIC GOVERNANCE ORGANIZATION AND INSTITUTIONAL RESPONSIBILITIES, *supra* note 24, at 14.

code should cover: (1) prohibited conduct of athletic staff, (2) response standards for reports, and (3) consequences for code violations.<sup>288</sup> An athletic department code of conduct should clearly define what constitutes abuse, thus limiting complaint dismissal.<sup>289</sup> Additionally, response protocols would hold institutions accountable for adhering to disciplinary procedures.<sup>290</sup>

## 2. Enhance the Institution's Internal Monitors

Maryland requires an administrator outside the athletic department to oversee the student-athlete reporting system.<sup>291</sup> However, complaints may still be ignored if the administrator reports to the president.<sup>292</sup> To combat the risk, laws should follow the FLA's mandate that members designate a person responsible for promoting code compliance.<sup>293</sup> The designated individual should resemble a Chief Integrity Officer (CIO).<sup>294</sup> CIOs oversee an organization's internal affairs, prevent misconduct, and encourage ethical behavior.<sup>295</sup> CIOs function independently but communicate directly with other company officers.<sup>296</sup>

Assigning athlete-related responsibilities to a CIO would enhance complaint acknowledgment.<sup>297</sup> The CIO can oversee the report process and assess the appropriateness of administrative action.<sup>298</sup> Further, a CIO benefits institution by promoting a proactive approach to coaching

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288. See, e.g., UNIV. ILL., CONDUCT EXPECTATIONS FOR COACHES 2 (2015).

289. Cf. *supra* notes 116–118 and accompanying text (dismissing athletes' concerns of abuse).

290. Cf. *supra* notes 210 and accompanying text (preventing situations such as Coach Durkin's reinstatement after the investigation finding mistreatment of student-athletes).

291. See MD CODE ANN., EDUC. § 11-1601(b)(1)(i)-(ii) (West 2019).

292. See, e.g., *supra* note 132 and accompanying text.

293. See *Fair Labor Accreditation*, *supra* note 280.

294. See WORLD ECON. F., THE RISE AND ROLE OF THE CHIEF INTEGRITY OFFICER: LEADERSHIP IMPERATIVES IN AN ESG-DRIVEN WORLD 3 (2021) (explaining an increasing trend in the corporate world to implement CIOs).

295. See *id.* at 7.

296. See *id.*

297. See, e.g., Lisa Chasanov & Ben Fader, *Conduct Q&A with Illini Athletics Chief Integrity Officer Ryan Squire*, DAILY ILLINI (Sept. 22, 2023), <https://perma.cc/PPV3-VJHX> (explaining that the CIO role enables issues in the athletic department to be detected and resolved immediately).

298. Cf. *supra* notes 138–140 and accompanying text (exemplifying inadequate institutional action).

abuse.<sup>299</sup> This approach prevents more significant scandals involving abuse and cover-ups from arising in the future.<sup>300</sup>

### 3. Increase State Authority

A CIO requirement would enhance an institution's internal safeguards, but increased state authority would promote reform.<sup>301</sup> Increased authority ensures institutions comply with legal and ethical responsibilities.<sup>302</sup> First, adding features from the FLA's assessment report could strengthen Maryland's existing requirement that state agencies receive annual complaint summaries.<sup>303</sup> FLA member reports must include: (1) descriptions of noncompliance, (2) remedial steps taken in response to noncompliance, (3) remedial steps to prevent reoccurrences of noncompliance, and (4) evidence the remediation plan was tracked to completion.<sup>304</sup> States could detect when institutions fail to resolve complaints effectively by requiring institutions to produce the same annual report.<sup>305</sup>

A state-based reporting mechanism could further strengthen state authority.<sup>306</sup> If states implement the FLA's third-party complaint system, student-athletes would not have to rely on institutional grievance procedures.<sup>307</sup> State-level complaint systems would safeguard against

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299. See Daniel Libit, *Happy Valley Needs Transparency*, *Penn State Integrity Czar Says*, SPORTICO (Apr. 13, 2022, 12:01 AM), <https://perma.cc/CK3F-4WTM> (stating that former Penn State University Athletic Integrity Officer Bob Boland explained that the CIO role saves institutions money because "it allows for the reasonable investigation of things before they get really bad").

300. See Eric S. Fillman, *Ethics Corner: Creating a Chief Integrity Officer Position*, NAT'L ASS'N ATT'YS GEN. (May 31, 2018), <https://perma.cc/TAS9-KVJA> (explaining that CIOs are included in decision-making for risk-management and legal, ethical, and operational compliance).

301. See, e.g., Kihl, *supra* note 246, at 169 (curbing corruption in sports through independent policies).

302. See *id.* at 174.

303. Compare MD CODE ANN., EDUC. § 11-1601(E)(1)-(2) (West 2019) (requiring institutions to report complaints), with FAIR LABOR ASS'N, PRINCIPLES OF FAIR LABOR & RESPONSIBLE PRODUCTION 6-7 (2022) [hereinafter PRINCIPLES OF FAIR LABOR] (summarizing information maintained in member monitoring reports).

304. See, e.g., PRINCIPLES OF FAIR LABOR, *supra* note 303, at 6-7.

305. See Andy Brown, *External Oversight Key to Athlete Trust in Abuse and Violence Investigations*, PLAY THE GAME, (June, 29 2022), <https://perma.cc/88LV-PPV8> (explaining real reform in athletics would occur through external review of abuse allegations and investigations).

306. See CENTRE SPORTS AND HUMAN RIGHTS, MAPPING ACCOUNTABILITY AND REMEDY MECHANISMS 21 (2019) (explaining a multiple tier system for dispute resolution as an effective feature in sport remedy mechanisms).

307. See MD CODE ANN., EDUC. § 11-1601(b)(1)(i)-(ii) (West 2019) (requiring an institutional complaint system). *But see* FLA CHARTER DOCUMENT, *supra* note 281, at 30 (creating complaint system for when local grievance mechanisms fail).

inaccurate annual reports and institutional remedies.<sup>308</sup> Instead, student-athletes and other third parties could directly notify the state of an institution's shortcomings.<sup>309</sup>

Additionally, states should have greater control over investigations.<sup>310</sup> Given the propensity for institutions to micromanage investigations, states should adopt the FLA's investigative authority.<sup>311</sup> FLA members may conduct an internal investigation, but if the FLA decides an independent investigation is necessary, it will appoint a neutral investigator.<sup>312</sup> In either case, the FLA receives a report of the investigation.<sup>313</sup>

Similarly, with investigative authority, states could ensure that internal investigations sufficiently address the scope and substance of each complaint.<sup>314</sup> By approving independent investigators, states would help promote objective, impartial findings.<sup>315</sup> Further, consistent record-keeping would ensure institutions conduct internal investigations properly, as states could require independent investigations for institutions that abuse their investigative powers.<sup>316</sup>

Lastly, states should increase public transparency.<sup>317</sup> While states face limitations on the information they can obligate institutions to publicize,<sup>318</sup> they could require institutions to release reports akin to Title IX annual reports.<sup>319</sup> These yearly reports should include the aggregated data of student-athlete complaints categorized by sport, complaint type,

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308. See CENTRE SPORTS AND HUMAN RIGHTS, *supra* note 306.

309. See *id.*

310. See Geeraert, *supra* note 241, at 23 (stating that an independent entity must have monitoring and ratification power).

311. See, e.g., *supra* text accompanying notes 147–149, 153–155.

312. See FLA CHARTER DOCUMENT, *supra* note 281, at 17–21, 31–32; see also *Fair Labor Investigations*, FAIR LABOR, <https://perma.cc/W5NU-G3CM> (last visited Jan. 2, 2024) (investigating members when there are “potentially serious” FLA violations).

313. See FLA CHARTER DOCUMENT, *supra* note 281, at 33 (including in the report all findings, recommendations, remediation plans, and corrective action taken).

314. See, e.g., *supra* note 147 and accompanying text.

315. Cf. *supra* note 164 and accompanying text (internal investigation failure).

316. See *Fair Labor Investigations*, *supra* note 312.

317. See Libit, *supra* note 299 (explaining lack of public disclosure on CIO findings inhibits institutional success).

318. See *FERPA: What it Means and How it Works*, STUDENT PRESS L. CTR, <https://perma.cc/2SK4-S2QJ> (last visited Feb. 24, 2024) (explaining how the Family Educational Rights and Privacy Act (FERPA) restricts certain institutional public disclosures and what qualifies as FERPA “personally identifiable information in education record” restrictions).

319. See, e.g., 14 DEL. CODE ANN. tit. 14, § 9006A (West 2018); see also, e.g., CAL. EDUC. CODE § 66282 (West 2024) (exemplifying state laws requiring institutions to publish annual reports on Title IX compliance and investigations).

outcome, and penalty imposed.<sup>320</sup> Public transparency incentivizes institutions to take corrective action, which prevents reoccurrences of coaching abuse.<sup>321</sup> Additionally, public accountability would compel institutions to prioritize student-athlete welfare.<sup>322</sup>

#### 4. Mandate Anti-Retaliation Remedies

Earlier recommendations concerned oversight and accountability.<sup>323</sup> The last recommendation seeks to protect student-athletes' educational opportunities.<sup>324</sup> Maryland's law prohibits retaliation against a student-athlete who reports abuse, but the statute does not offer student-athletes a remedy when retaliation occurs.<sup>325</sup>

Currently, a student-athlete can have a scholarship reinstated when it has been revoked for reporting coaching abuse.<sup>326</sup> However, this reinstatement obligates the student-athlete to remain on the team.<sup>327</sup> Moreover, remedies often do not exist for student-athletes blacklisted from transfer programs.<sup>328</sup> Thus, a student-athlete has three choices: (1) stay in their sport to afford education, (2) end their athletic career and lose their scholarship, or (3) attempt to transfer with limited prospects.<sup>329</sup>

To resolve this issue, states should require institutions to establish remedies for adverse retaliatory actions.<sup>330</sup> While the FLA reviews and approves member-created remedies,<sup>331</sup> state-mandated remedies would

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320. *See generally* MICH. S. UNIV., ANNUAL REPORT REGARDING INSTITUTIONAL RESPONSE TO REPORTS OF SEXUAL AND GENDER-BASED MISCONDUCT (2023) (showing an example of what information the athletic department report could include).

321. *Cf. supra* notes 164–165 and accompanying text (discussing repeated student-athlete abuse at UC Berkeley).

322. *Cf. supra* notes 148–149 (reinstating a coach and denying public disclosure after reports of abuse).

323. *See supra* Sections III.B.1–3.

324. *See, e.g.*, UC Berkeley Complaint, *supra* note 58, at 33 (showing student-athletes choose enduring coaching abuse in order to maintain their scholarship depended on to attend college or university).

325. *See* MD CODE ANN., EDUC. § 11-1601(b)(1)(ii)-(iii) (West 2019).

326. *See, e.g.*, *Financial Aid – Athletics Compliance Office*, UNIV. NOTRE DAME: DEP'T ATHLETICS, <https://perma.cc/CJ2Q-T6E2> (last visited Feb. 21, 2024); *see also* UNIV. M.D. ATHLETICS, FINANCIAL AID (2012) (showing reasons for athletic scholarship cancellation).

327. *See Financial Aid – Athletics Compliance Office, supra* note 326 (canceling scholarships because of an athlete's departure from the team is permitted).

328. *See id.*

329. *See, e.g.*, *supra* text accompanying notes 53–55.

330. *See, e.g.*, COLLEGE ATHLETES PROTECTION AND COMPENSATION ACT OF 2023 § 4(f)(3) (Draft 2023).

331. *See* FLA CHARTER DOCUMENT, *supra* note 281, at 32; PRINCIPLES OF FAIR LABOR, *supra* note 303, at 7.

guarantee effectiveness and eliminate the need for case-by-case assessment.<sup>332</sup>

One remedy should preserve a student-athlete's scholarship for the duration of their education if their scholarship were revoked for reporting coaching abuse.<sup>333</sup> The remedy would apply regardless of continued athletic participation.<sup>334</sup> Upholding scholarships prevents financial repercussions from abuse-related departures and ensures student-athletes attend their chosen institution.<sup>335</sup> An additional remedy should require a liaison between the student-athlete and coach during the transfer process.<sup>336</sup> The liaison would oversee communication between a coach and an athlete's transfer program and deter blacklisting.<sup>337</sup>

While these proposals seek to effectuate a cultural change in college sports, concerns emerge about imposing onerous financial burdens on institutions.<sup>338</sup> However, instituting these proposals would likely provide institutions long-term economic savings.<sup>339</sup>

Administrative requirements require institutions to respond to reports of abuse thoughtfully.<sup>340</sup> Proper responses would reduce future scandals and the costs institutions would ordinarily bear from reactionary measures.<sup>341</sup> Further, repeated instances of abuse would be unlikely to occur because public disclosure and mandated remedies incentivize institutions to adopt zero-tolerance policies.<sup>342</sup> Lastly, institutions would

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332. Cf. Protecting Athletes, Schools, and Sports Act, S. 2495, 118th Cong. § 7(d)(2) (2023) (proposing that institutions honor scholarships if a student-athlete is permanently injured).

333. See, e.g., COLLEGE ATHLETES PROTECTION AND COMPENSATION ACT OF 2023 § 4(f)(3) (Draft 2023) (exemplifying scholarship preservation in the case of career-ending medical injuries that causes a student-athlete to be dismissed from the team).

334. See *id.*

335. See BRAKE & NELSON, *supra* note 48, at 15 (“[S]cholarships . . . can mean the difference between being able to afford a college education or not.”).

336. See, e.g., *Staff Directory*, UM TERPS, <https://perma.cc/S5RG-N55V> (last visited Jan. 10, 2023) (utilizing team specific directors or Faculty Athletics Representatives as the liaison).

337. See, e.g., *supra* note 55 and accompanying text.

338. See, e.g., *Maryland Hearing*, *supra* note 215, at 42:04 (questioning financial impact of Towson's reporting system).

339. See Jeff Barket, *University of Maryland is Paying Coaches \$8.1 Million not to Coach – Including Some Who Were Fired After Football Player's Death*, BALTIMORE SUN (Mar. 3, 2020, 10:25 PM), <https://perma.cc/7JRX-8FG9>; see also Jenna West, *Maryland Commission Charged \$650 an Hour for Investigation into Football Program*, SPORTS ILLUSTRATED (Jan. 31, 2019), <https://perma.cc/RF77-PULB> (totaling investigations and contract buy-outs at over \$7 million).

340. See *supra* Section III.B.2.

341. See, e.g., *supra* note 151 and accompanying text.

342. See *supra* Sections III.B.3.–4.



enhance their reputations by protecting student-athletes versus protecting abusive coaches.<sup>343</sup>

#### IV. CONCLUSION

The damaging effects of coaching abuse on student-athletes extend beyond their tenure in sports.<sup>344</sup> The enduring trauma deprives student-athletes of the promising future they once envisioned.<sup>345</sup> When abuse is combined with inadequate oversight, the consequences can be fatal.<sup>346</sup>

Relying on the NCAA and institutions to rectify the flawed system and protect student-athletes is futile.<sup>347</sup> The solution lies in state-level intervention, exemplified by Maryland's proactive law that curbs coaching abuse through increased institutional oversight and accountability.<sup>348</sup> Ignored calls for federal intervention, combined with congressional inaction and SafeSport's shortcomings, highlight the need for state-level regulation.<sup>349</sup>

Maryland's law represents a crucial step to filling the regulatory gap in intercollegiate athletics.<sup>350</sup> However, future legislators should improve upon Maryland's statute by increasing state oversight, enhancing institutional accountability, and strengthening protections against student-athlete retaliation.<sup>351</sup> By prioritizing student-athlete welfare over institutional agendas, states can prevent tragedies like Jordan McNair's. It is time for other states to follow Maryland's example and transform the culture of intercollegiate athletics.

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343. See COLLEGE ATHLETE PROTECTION, *supra* note 23, at 6–7 (explaining “moral injur[ies]” to institutions that betray student-athletes).

344. See Alexander, *supra* note 43 (“No one believes the athlete’s story. This isolation and invalidation continue until the athlete quits.”).

345. See Lever, *supra* note 20.

346. See discussion *supra* Section II.D.

347. See discussion *supra* Section II.B.

348. See discussion *supra* Section II.E.

349. See discussion *supra* Section III.A.

350. See discussion *supra* Part III.

351. See discussion *supra* Section III.B.