

Taking a Hit: College Athletics Downsize in Response to COVID-19 Related Financial Losses

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Collegiate sports have taken the spotlight in a new way amidst the novel coronavirus pandemic. Instead of reading or listening to pre-season reports predicting teams' outcomes, college sports fans have been turning to the news to determine whether their teams are even going to have the chance to play. Colleges and universities have modified, postponed or cancelled their sports seasons due to health concerns and compliance with federal and state guidelines.

Needless to say, the interruption of the college sports season, particularly Division I football, has caused a significant loss of revenue for the teams' universities and colleges. This fiscal loss—at one point estimated to be over \$1.2 billion in ticket sales alone—has resulted in schools restructuring their sports offerings and athletic departments.

The Goulston & Storrs College Sports Law Practice is keenly aware of the legal issues involved. We partner with schools in identifying the risks in downsizing, guiding them through the regulatory and statutory maze, including Title IX and Title VII, and maintaining a diverse and inclusive program that is consistent with the college or university's culture and values.

Restructuring Before and After COVID

The idea of colleges' restructuring their athletic programs is not a COVID-specific strategy, although COVID may have accelerated the need and pace. Years before the pandemic, some schools restructured their athletic department and offerings in response to financial concerns. In January 2017, Dalton State College, for instance, announced its plan to reorganize its athletics department into one "it can afford to maintain." Dalton State cut four National Association of Intercollegiate Athletics (NAIA)-sponsored sports teams (men's and women's tennis, men's cross-country, and women's volleyball), the cheerleading program, added one sport, and scaled back two others in an effort to create a more sustainable athletic program. The college predicted that the reorganization would save approximately \$1 million. Dalton State also announced that while the scholar-athletes would lose their athletic scholarships, the college would ensure the students had sufficient financial assistance to continue their studies.

Since March 2020, a number of colleges and universities have reorganized athletic programs. Citing COVID, the cancellation of its fall season and a potential \$100 million revenue loss, the University of Iowa announced its plans to discontinue the men's gymnastics team, the men's tennis team and the men's and women's swimming and diving teams. The University of Iowa also announced cuts to its staff's salaries and operational expenses.

An example of the pandemic accelerating the pace of reorganization has been Stanford University. Stanford has for years distinguished itself as an athletic powerhouse with 36 varsity teams—more than twice the national average for Division I programs. For its fiscal year 2021, Stanford had projected a \$12 million deficit. After March 2020, Stanford reforecast its financials and showed a potential deficit of over \$25 million for that same fiscal year. The pandemic provided Stanford with an opportunity to reorganize and resize its athletic program. Thus, it was not at all surprising that in July 2020, Stanford announced a major reorganization of its athletic program and department, stating it would cut 11 varsity sports programs after the 2020-21 academic year: men's and women's fencing, field hockey, lightweight rowing, men's rowing, co-ed and women's sailing, squash, synchronized swimming, men's volleyball and wrestling. Stanford also announced it was reducing its athletic staff by 10%. Stanford assured its community that all current student-athletes would continue to receive their scholarships for the remainder of their undergraduate careers, and that they would have the opportunity to continue competing at the club level.

Similarly, the pandemic has accelerated the University of Connecticut's review and reorganization of its athletic programs. In June 2020, UConn announced that it would be eliminating 4 of its varsity sports: men's cross country, men's swimming and diving, men's tennis and women's rowing teams. The university stated that the cuts, along with reducing the athletics operating budget by 15%, could save the school approximately \$10 million.

Assessing the Cuts

Stanford University and UConn have made cuts in two significant areas: non-revenue sports and athletic departments. The pandemic has caused colleges and universities to review and reassess their rationales for maintaining non-revenue sports and the consequent number of employees in their athletic departments. In short, the pandemic did not create the need to reorganize, but accelerated its review and implementation. By way of example, over the past year 17 Division I schools have eliminated their varsity tennis teams. Rowing, wrestling, and gymnastics teams are other non-revenue sports that have been eliminated in recent months.

What Are the Risks?

But in cutting non-revenue sports and athletic departments, what risks are colleges and universities facing? One significant risk concerns the ability of the school to attract world-class athletes. As Big 12 Commissioner and former IOC Committee member Bob Bowlsby points out, there are only 17 collegiate men's gymnastics programs in the United States. "If those go away," Bowlsby states, "[the United States'] Olympic efforts in men's gymnastics will be devastated." And, with any restructuring, comes the question how to minimize the risks of lawsuits from student-athletes who may claim they were misled into enrolling, loss of eligibility or loss of their grant-in-aid package because of arbitrary or discriminatory decision-making.

Another risk is that many schools, in particular Division II and III schools, rely on their sports programs as part of their enrollment strategy. One in six students at Division III schools and one in 10 students at Division II schools are student-athletes, as compared to one in 23 at Division I institutions. Many of these students are attracted by the opportunity to play non-revenue sports at the collegiate level. With the enrollment and recruitment risks comes the attendant risks that

donors will not support the cuts, particularly in sports in which the donors participated, and the college or university will not be able to attract top-level athletic directors and coaching staff. Aligning all these interests presents legal risks too.

Still another risk concerns compliance with Titles IX and VII. Title IX applies to all institutions that receive federal funds. In general terms, Title IX requires “that women and men be provided equitable opportunities to participate in sports,” which the NCAA and courts have interpreted to mean that men and women’s program receive the same level of service, facilities, supplies, among others.^[1] To comply with Title IX, colleges and universities which downsize their athletic programs must ensure the cuts are done proportionally and that the restructured program still meet the criteria of equal or commensurate treatment of the student-athletes, service, facilities, supplies coaching, publicity, support and recruitment. And, COVID-related downsizing does not exempt an institution from complying with Title IX. Earlier this year, Brown University tried to eliminate five women’s varsity teams. As a result, several female student-athletes sued Brown. In a court-approved settlement, Brown agreed to reinstate the women’s fencing and equestrian teams and to maintain equal support as it would for any men’s team. Brown also agreed not to reduce the status of any women’s varsity sport or to add any men’s team for the next four years.

Schools eliminating or furloughing staff members must also keep Title VII in mind when doing so. Title VII prohibits an employer from “discharging or discriminating against any individual with respect to their compensation, terms, conditions and privileges of employment on the basis of race, color, religion, sex, national origin” and (as of June) sexual orientation and gender identity. Title VII has historically been an avenue by which athletic department employees received substantial damages for disparate treatment by the school. For example, in 2016, the University of Minnesota-Duluth’s women’s hockey coach received a \$3.7 million award for Title IX and Title VII claims against the university, in response to the university’s decision not to renew her contract despite the coach’s success. The UMD coach claimed and proved gender and sexual orientation discrimination in her firing, proving disparate support and pay between her and male athletic coaches. At San Diego State University, in 2018, the university agreed to a \$4 million settlement with the head women’s basketball coach to resolve her claims that she was wrongfully terminated in 2013 in retaliation for voicing concerns about the university’s possible Title IX violations.

Cultural Impacts on the Overall Community

These changes to the athletic departments have a rippling effect throughout the surrounding college community. Undeniably, the cuts to the varsity teams have a huge impact on the student-athletes, but the college as a whole might feel the loss acutely. Therefore, cutting certain teams over others might foster resentment for the greater campus community. Students and administration may take the school’s decision to cut women’s volleyball over men’s golf as a sign that men’s sports are a higher priority, for instance. Or, looking at it conversely, the decision to keep women’s volleyball and ax the men’s golf team may send the message that men’s sports are at risk because of Title IX compliance requirements, which leads to some negative feelings towards both the administration and the women’s athletic programs.

Goulston & Storrs Can Help

When it comes to reorganizing, colleges and universities need to consider all legal and business options available—as well as potential impact of federal protections under Titles IX and VII—to manage their risks. Schools contemplating program reductions and staff cuts or furloughs need to understand whether and how their actions may disparately impact protected classes or they may find themselves in a legal battle that would incur the school more in costs than the money the school is trying to save by making these cuts.

We have thought about these issues. The Goulston & Storrs College Sports Law Practice can help in identifying, understanding and complying with the laws and regulations and partnering with the athletic departments and schools to limit risks resulting from reorganizing athletic departments and programs. Our Practice is comprised of diverse lawyers with expertise in, among other areas, reorganization, Title IX and Title VII and litigation. If you would like to explore any of these issues, please contact [Martin Edel](#) or your usual Goulston & Storrs attorney.

[1] In order for a school's athletics program to comply with Title IX, the school must demonstrate one of the following: "(i) participation opportunities for men and women are proportionate to the overall population of enrolled full-time students; (ii) demonstrate a history and continuing practice of program expansion for the underrepresented sex; or (iii) fully and effectively accommodate the interests and abilities of the underrepresented sex." Additionally, institutions must provide athletics scholarship dollar amounts to female and male student-athletes that are proportionate to the athletes' participation. Title IX also requires the equal treatment of female and male student-athletes in the provisions of: "(a) equipment and supplies; (b) scheduling of games and practice times; (c) travel and daily allowance/per diem; (d) access to tutoring; (e) coaching, (f) locker rooms, practice and competitive facilities; (g) medical and training facilities and services; (h) housing and dining facilities and services; (i) publicity and promotions; (j) support services and (k) recruitment of student-athletes."