A fully-informed appraisal of the scholarship contract term we saw in *Taylor* requires an understanding of the constraints imposed on players such as Fortay. Once the student-athlete enrolls in the school, NCAA rules erect a significant hurdle to the athlete choosing to transfer to another school.[1] No athletic representative of another college may contact the student-athlete without permission from his current college (Article 13.1.1.3). Without such permission, no financial aid can be provided to a transferee until at least one year has passed. And even with permission from the first institution, the basic rule (in Article 14.5.1) is that a transferring student in Division I is ineligible to compete in football, basketball, or ice hockey until after a full academic year in residence at the new school—and without that permission the transferring player is ineligible for two years. (Recall that there is a maximum player eligibility period of five calendar years.) The NCAA's transfer regulations take up ten pages in its Manual. The following case concerns a student-athlete who thought that he had found a loophole in these regulations.

ENGLISH V. NCAA

Court of Appeals of Louisiana, Fourth Circuit, 1983.
439 So.2d 1218.

SCHOTT, JUDGE.

* * *

[Jon English, a highly rated high school quarterback, was recruited by and enrolled at Michigan State for the 1979–1980 school year. Realizing that his playing prospects at Michigan State were poor, English dropped out for a year to enroll at a junior college in Pittsburgh, the city in which his father was an assistant college football coach. English then went to Iowa State, where he played in the fall seasons of 1981 and 1982. After having little success in the Hawkeye State, English spent the winter and spring of 1983 at a junior college in New Orleans, and then sought to enroll and play for Tulane in the fall of 1983, a school where his father was now head coach. English considered himself eligible because the NCAA rule at the time, as well as the summary of the rule in the NCAA Guide for the College-Bound Student-Athlete, referred to a year elapsing "since the transfer from the *first* four-year college." Having failed to persuade the NCAA of his position, English brought suit.]

* * *

Plaintiff's due process argument is based on the theory that the NCAA did not adequately inform him of the rules regarding his eligibility. He argues that the rule as quoted in the NCAA Guide literally entitled him to play ball with Tulane in 1983 because a year had elapsed since his transfer from the first four-year college, Michigan State, in 1980. Thus, he attacks the interpretation placed on the rule by William Hunt, head of the NCAA's Legislation and Enforcement Section, as being unreasonable in defining "first" to be the last four-year college. He argues further that the Guide's references to residence and semester hours completed at junior colleges further confuse the transfer rule and create further ambiguity. Finally, he rejects the notion that he would have sought further interpretation of the rule even if he had read the introduction because it was so clear to him that he was eligible.

The record does not support this argument. First, it is clear from the testimony of plaintiff's father, Coach English, that there was from the very beginning a question in plaintiff's mind about his eligibility notwithstanding the way he wanted to read the rule. He was plainly aware of the

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[1] See Michael J. Cozzillio, *The Athletic Scholarship and the College National Letter of Intent: A Contract by Any Other Name*, 35 Wayne L. Rev. 1275 (1989).

For an argument the NCAA should create exceptions to the no transfer rule in certain situations, such as a head coach leaving the program, see Justin P. Sievert, *Coaching Changes and NCAA Transfer Rules: Is the Current System Leaving Athletes Abandoned?*, 9 Willamette Sports L.J. 49 (2011).

underlying and laudable policy of the NCAA to prevent a student from playing for two different colleges in successive years. Second, while he pretends to a sincere belief that the rule plainly declared him eligible, his first move after seeing the rule was to raise a question about it with his father who in turn raised questions about it with Petersen and Wall. He was squarely in the teeth of the Guide's introduction, i.e., he had questions about NCAA legislation, and was obliged to contact the NCAA national office for answers. But he failed to avail himself of this opportunity. Instead, he embarked on a course which he knew was perilous and preferred to take a chance that somehow his interpretation might be accepted by the NCAA.

It is well to note here that plaintiff was determined to play for his father at Tulane if at all possible. His prospects at Iowa State, as at Michigan State previously, were poor and not at all conducive to his being considered for a professional football contract upon his graduation from college. He explained that his skills as a quarterback could be best developed under the tutelage of his father who was a pass-oriented coach. Since this would be his last year of college ball it was important for him to make the most of it. Only his interpretation of the transfer rule would make all of this possible.

We find Hunt's interpretation of the rule to be absolutely correct. The rule is dealing with a present college attempting to certify a player as eligible when he has played for a previous college. It contemplates two colleges, the first and the second. If one plays for a college one year he can't play for another college the next year. He must sit out for a year after playing for the first college. The rule does not and need not concern itself with the bizarre kind of a situation where one had played for yet a third college in the distant past. Reduced to its simplest terms a player may not jump from one college to another in successive years. We repeat that plaintiff on his own and again after speaking to his father was generally aware of the rule's meaning and while hoping to have found a loophole had questions about his theory.

* * *

There is no support in the record for plaintiff's contention that the NCAA was arbitrary, capricious, unfair, or discriminatory in dealing with his case. Had he inquired of the NCAA as to his plans before he left Iowa State he would have been told that he could not play at another college in 1983. Some 900 colleges belong to the NCAA and thousands of players abide by its rules. They do so voluntarily apparently convinced that constraints on their freedom to move about from college to college are a fair price to pay for protection against the evils which would emerge from untrammeled recruiting practices and uncontrolled pirating of players among the colleges. The word "arbitrary" connotes acting without reason or judgment, or determined by whim or caprice. "Capricious" is virtually synonymous. The record reflects that the NCAA, in adopting and implementing the transfer rule at issue here, acted quite reasonably in its efforts to prevent players from jumping from one school to another in successive years. Plaintiff was not dealt with unfairly. He was the victim only of his own plans and his own hope for special treatment. . . .

* * *

Appeal dismissed.

BARRY, JUSTICE, dissenting.

This case involves a very unique and isolated situation involving a very narrow question of interpretation of one word in an NCAA bylaw which may determine the eligibility for a student-athlete's last year of intercollegiate football competition.

* * *

[After reviewing the relevant materials and agreeing with English's reading of the rule, the dissent continued.]

The NCAA virtually controls football in over 900 colleges. Its purpose is to regulate sports programs and maintain the integrity of amateur athletics. Member schools must adhere to rigid rules or suffer severe sanctions. Considering the NCAA's enormous control (and its laudable purposes), it must also bear some burden to account for its heavy hand options.

Along with the NCAA's privileges goes the duty to provide clear and accurate information when disseminating its many rules and regulations. Jon English's interpretation of [the NCAA rule] was reasonable because the language is clear. His conclusion was supported by Mr. Wall. "First" still means "first," not "last," contrary to what Mr. Hunt would have us believe. What the NCAA intended, and what it published, were two different things. "Intent" is immaterial when the expression is unambiguous.

The majority's opinion is a Monday morning quarterback's opinion of what should be, but wasn't; what was intended, but not expressed. The NCAA goofed on the English language (no pun intended). Jon English relied on the NCAA bylaw and changed his position to his detriment. He was supported and encouraged in his belief by his more sophisticated superiors. Surely he has a right to protect his interests based on these extraordinary facts. That right should permit his eligibility [under the NCAA rule].

A subsequent decision, *McHale v. Cornell Univ.*, 620 F.Supp. 67 (N.D.N.Y.1985), refused to read an exception into this non-transfer NCAA rule, even in the case of a student-athlete who had dropped out of the University of Maryland where he had been playing football on scholarship, then moved to Cornell for purely academic reasons (and without a scholarship), but was barred from playing Ivy League football in his senior year.

Certainly this NCAA rule would seem very odd if it restricted student participation in other extracurricular college activities. No one would have been concerned if Jon English wanted just to be the reporter covering sports for the Tulane school newspaper, or to participate in a college drama group. The historic reason why the NCAA felt compelled to adopt such strict controls on mobility for student-athletes was its concern about the practice of "tramp athletes." One of the most highly publicized of these "tramp" incidents occurred in the 1890s when Fielding Yost, then a third-year law student at West Virginia, enrolled as a freshman at Lafayette on a Wednesday in order to help Lafayette's football team beat its arch-rival Pennsylvania that Saturday. Yost then withdrew from Lafayette in time to return to West Virginia for classes on Monday. (He later became one of the most successful head coaches in college football history, at Michigan.) Today, the stated reason for retaining the rule is the fear that top athletes enrolled at one college will constantly be recruited by other schools. Once a student-athlete chooses a school and signs a letter of intent, the NCAA wants the student to be left alone to pursue his or her studies and sports without being wooed by other schools that might also be tempted to offer improper inducements. Are these legitimate concerns that justify transfer regulation?

Note also the breadth of this anti-transfer rule for football, basketball, and ice hockey. Is a two-year ban on eligibility without the consent of the "home team" university excessive? Or even a full one-year ban if the student-athlete transfers with his prior school's consent? How does such a restriction likely affect the treatment received by athletes from their current schools? Why is this two (or automatic one) year hiatus on eligibility applied only to athletes in college football, basketball, and ice hockey? What should be the operation of the rule in cases where the program is put on NCAA probation? When a player's personal circumstances or relationship with the coach changes? When the head coach leaves a particular school, especially in the case of a student who has signed a letter of intent but not yet even enrolled at the school? What should be the NCAA rule when a college closes down a sports team?

Perhaps one lesson from all of the preceding cases is that the most appropriate legal vehicle for scrutinizing such a restraint of college athletes may not be contract or (after *Tarkanian*) constitutional, but antitrust law.