

The National Letter of Intent: A Contract Analysis

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The National Letter of Intent (NLI) is an agreement between a prospective student-athlete and an educational institution agreeing that a prospect will attend the institution for one year and that the institution will provide a financial aid award in return (www.ncaa.org/wps/wcm/connect/nli/NLI/About+the+NLI/, 2009). This contract (Cozzillio, 1989) prevents a student-athlete from rescinding the agreement if the head coach leaves the institution, as the NLI is an agreement with the institution, not the coach. However, this belies the reality that players attend a university primarily based on a coach's program. This presentation addresses contract law principles to determine whether the NLI could be unenforceable against prospective student-athletes in such a circumstance.

A recent dispute highlights the unenforceability arguments that can be raised concerning the NLI when the prospect is a minor. A 17-year-old basketball prospect signed a NLI with Western Carolina University. This prospect requested a release from the NLI when the head coach left. When the school refused, a lawsuit was filed, asserting that the prospect's minority permitted her to disavow the contract (Letters of intent may not stand up, 2009). This argument was based on a state statute allowing minors who have signed agreements to "render services as a participant or player in a sport" to disavow contracts which have not been reviewed by a Superior Court judge (N.C. Gen. Stat. § 48A-11, 2009). There are other states with similar statutes passed to protect minors in the entertainment industry (Hruby, 2006). Also, there are common law principles generally allowing minors to disavow contracts (Miller & Jentz, 2008).

Further, there are strong arguments to void the NLI if the agreement proves to be substantially disadvantageous to an adult prospect. As Meyer (2004) discusses, there is a huge disparity in bargaining power and no ability to negotiate any aspect of the document, which may be unconscionable procedurally and substantively (Hanlon & Yasser, 2008). The prospect's only decision is whether to sign the NLI. Since courts are reluctant to read any oral promises into a contract, Riella (2002) asserts that a coach's statement that he/she will not leave the program should be read as a condition precedent, not as a promise, and "only the fulfillment of such a representation will trigger the athlete's duty to attend the institution" (p. 2200). Finally, some commentators (Davis, 1997; Hanlon, 2006; Ciccolella, Sharp & Krueger, 2008) have argued that a neoclassical model of contract interpretation should be applied in contracts between educational institutions and student-athletes, thus permitting courts to go beyond explicit promises by addressing public policy considerations. This type of interpretation would allow the "reasonable expectations" of a prospect to be addressed even if express language is not within the document.