Upon Further Review: Recognizing Procedural Due Process Rights for Suspended High School Athletes

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A Modern Pandora’s Box
Music, the Internet, and the Dilemma of Clearing Public Performance Rights

BY DAVID M. GIVEN

In Greek mythology, Pandora was the name given to the world’s first woman. Molded from earth at Zeus’ instruction, each of the gods contributed to her completion. She played a pivotal role in the ancient accounts by opening a jar and releasing all the evils of mankind—greed, vanity, slander, envy—upon the world.

Her name (which translates literally as “all-gifted”) was recently appropriated by a Bay Area startup. In 2000, Pandora—the modern online version—began what it called the “Music Genome Project.” Employing a team of musicians, the company undertook to decode the details of each song from the canon of popular recorded music, using a matrix of distinct musical attributes.

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Upon Further Review
Recognizing Procedural Due Process Rights for Suspended High School Athletes

BY RAY YASSER AND MATTHEW BLOCK

I. INTRODUCTION

A. Recurring Scenarios

Meet Jimmy Blevins. Jimmy plays football at a small-town public high school and is the best athlete in town. Jimmy is not quite talented enough to play football on the Division I level after graduation, but several Division II schools have been recruiting him since his breakout junior season. The community knows Jimmy as a hard worker and all-around good guy. He will never be mistaken for the school valedictorian, but he tries hard in school and his grades are sufficient to keep him eligible to play. Before Jimmy’s breakout season last year, he...
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planned to work at the town factory after graduation, but now is focusing his attention on receiving a Division II athletic scholarship.

Two weeks before the first game of Jimmy’s senior season, he was kicked off the team for his alleged involvement in an off-campus party. After questioning several students about the incident, the principal came away with conflicting reports about what occurred that night. All indications were that alcohol and other illegal substances were distributed and used at the party. If true, the students involved violated public laws, school rules, and the student-athletes broke additional team rules. While only one student mentioned Jimmy’s name in connection with the party, the principal decided to make an example of Jimmy. Jimmy was suspended from the football team by the coach, who acted upon orders of the principal.

The principal refused to hear Jimmy’s side of the story, which would have revealed that he was not at the party. Since being banned from participation in football, Jimmy’s scholarship offers have been withdrawn. The recruiters were spooked by the incident, sensitive to the issue of giving scholarships to students with bad character. Many members of the community have changed their opinion of Jimmy, believing the false reports about the party. Reluctantly, Jimmy has sued the school district for denying him his procedural due process rights.

Meet Sally Montross. Sally plays volleyball for the local public high school and is a good player. Sally has no plans to play volleyball at the collegiate level, but she enjoys the camaraderie of being with the other girls and the exercise she gets practicing every day after school. Sally believes that she gains fulfillment and benefits at school through her participation in volleyball.

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On her report card, Sally received a 67 percent in history and was promptly notified that she would not be able to play volleyball for the rest of the term because she failed to meet the required academic standard. Sally believes that this grade is incorrect, and she suspects that it is a result of a mechanical or mathematical error by the teacher. Unfortunately, the local high school has a strict policy against reviewing and adjusting grades after they have been reported by the teacher and recorded in the school’s system. Sally has sued the school district for denying her procedural due process rights in regard to the suspension from volleyball.

Meet Billy Williams. Billy plays basketball for the local high school. Billy is by no means a star player on
his school’s team. He is the third-string point guard and averages only eight minutes per game. Nonetheless, playing basketball is very important to Billy. He lives in a low-income neighborhood that is infested with drugs and gangs. Billy has avoided this lifestyle by playing basketball at every possible opportunity since junior high. Billy keeps his grades high enough to play sports, but with no family support urging him to excel in academics, Billy only does enough to stay eligible for the basketball team. Billy’s three older brothers never graduated high school, dropping out before the completion of their sophomore years.

Unfortunately, Billy was not allowed to participate in basketball for his senior year because he turned 19 the summer before. The state high school athletic association has an eligibility rule that requires all participants to be under the age of 19 prior to the start of the season. Billy had been held back a grade in elementary school after his learning disabilities were discovered. Neither the local high school nor the athletic association would hear Billy’s appeal for an exemption. Now, Billy sues the local public high school and the state high school athletic association for violating his due process rights.

While the student-athletes above have very sympathetic stories, the message that the majority of courts across the United States deliver to students is “tough luck.” Courts have found that students have no right to present their side of a story when they are dismissed from their public high school athletic team.2 The U.S. Supreme Court has laid the foundation for courts to protect students’ rights to tell their stories,3 but the majority of courts have avoided this route for the past 30 years.4 Instead, students face the legal reality that they leave their right to educational benefits5 derived from athletic participation and their right to protect their good name at the schoolhouse gate.6 The arbitrary deprivation of the right to participate in high school athletics is viewed as constitutionally insignificant.

B. The Legal Backdrop

In San Antonio Independent School District v. Rodriguez, the Supreme Court ruled that high school students did not have a constitutional right to public education.7 However, three years later, in the landmark case Goss v. Lopez, the Court clarified Rodriguez and determined that the Fourteenth Amendment prohibits the state from depriving students their property or liberty interests in public education without due process.8 These interests are “normally not created by the Constitution. Rather, they are created and their dimensions are defined by an independent source such as state statutes or rules entitling the citizens to certain benefits.”9 Every state had enacted compulsory school attendance laws that guaranteed a free education by 1918.10 It is based on these state laws that students have a protected right to a public education.11 Once a state has ratified such educational legislation, that state is “constrained to recognize a student’s legitimate entitlement to a public education as a property right which is protected by the Due Process Clause and which may not be taken away for misconduct without adherence to the minimum procedures required by that Clause.”12

While a student has clearly been granted Fourteenth Amendment due process protection in the context of education, the U.S. Supreme Court has yet to address the issue of whether there is a constitutionally protected interest in participating in high school athletics.13 However, most lower federal and state courts have held that there is no right to participate in extracurricular activities, including athletics.14 Cases holding that student-athletes have a Fourteenth Amendment Due Process interest are anomalies in the American legal system.15 Despite the vast majority of holdings that students have no protected interest in athletic participation, some of the decisions concede that athletics play an integral role in the educational process.16 This article will demonstrate that high school athletic participation is an integral part of the educational process,17 indistinguishable from the academic aspects of public education. Therefore, any suspension of a student from athletic participation must be accompanied by proper Fourteenth Amendment procedural due process or risk violating a student’s constitutionally protected property or liberty interest in athletic participation.

Part I of this article lays out the current landscape of the law relating to student-athletes’ procedural due process rights. In this section, the basic elements required to make a due process claim are discussed. Then the comment sets out an analysis of the majority view and two minority views to frame the legal arguments that can be raised by student-athletes. Part II of this comment discusses the property interest that students have in high school athletic participation. The section discusses the changes that have occurred in the area of high school athletics since the courts first decided to deny student-athletes due process protection. Additionally, this section takes an in-depth look at the scholarly research that shows that participation in high school athletics plays an integral role in education. This research demonstrates that high school student-athletes derive benefits such as academic success, character development, future educational success, future employment success, and health—just to name a few. Part III of this article discusses the liberty deprivation interest that occurs when public high schools suspend student-athletes from athletic participation without proper due process. The conclusion is that the denial of the right to participate in high school athletics is worthy of constitutional protection.

II. PROCEDURAL DUE PROCESS

The Fourteenth Amendment to the United States Constitution provides, “In no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property,
The Fourteenth Amendment provides two types of due process protection: procedural and substantive. This article focuses on the procedural due process protection that students participating in high school athletics should be afforded. Based on a plain reading of the language of the Fourteenth Amendment, procedural due process is only required when there is a deprivation of a student’s life, liberty, or property. As a practical matter, students typically argue that the school has deprived them of their property or liberty interest. Interests garnering due process protection should not be viewed as rigid preset categories; rather, the court needs to examine the interest in light of changing society and new information. The court in Board of Regents v. Roth explained, “‘[l]iberty’ and ‘property’ are broad and majestic terms. They are among the ‘great [constitutional] concepts . . . purposely left to gather meaning from experience . . . . They relate to the whole domain of social and economic fact, and the statesmen who founded this Nation knew too well that only a stagnant society remains unchanged.’”

Further, in order to prove that a student has due process protection, the student must show two things. First, the student must demonstrate that there was “state action.” Second, the student must prove that there is a “constitutionally protected liberty or property interest in athletic participation.”

A. State Actor Requirement

The threshold question for the student-athlete in a due process argument is determining whether the school or state high school association is a state actor. While some cases contest whether a school is a state actor, this typically is not a difficult element to establish. Public schools are consistently found to be state actors by courts, while private schools are generally outside the scope of the Fourteenth Amendment.

One area of dispute arises when private entities engage in state action, specifically, state high school athletic associations. These athletic associations formulate rules and administer high school athletic competitions in their respective states. Additionally, these organizations are formally private and are oftentimes charged with the duty of sanctioning member schools. These associations set forth many standards that students must meet in order to participate in athletics. These rules include academic standards, age requirements, substance abuse guidelines, physical ability, and transfer stipulations. High school athletics in all 50 states and the District of Columbia are governed by athletic associations that are members of the National Federation of State High School Associations. The Supreme Court has held that these putatively private state high school associations are engaged in state action when they regulate high school athletics because of the “pervasive entwinement of state school officials” in the association. In Brentwood Academy v. Tennessee Secondary School Athletic Association, the Court explained that the actions of a private organization are state action if those actions can be fairly attributable to the state because of the “close nexus between the state and the challenged action.” Typically, when these state high school athletic associations engage in “sponsoring, administering, regulating, and supervising interscholastic athletics,” their actions “will constitute state action within the meaning of the due process clause.”

B. Protected Interest

The leading case for analyzing constitutional questions regarding a student’s property or liberty interest in participation in high school athletics is Goss v. Lopez. In 1975, the Supreme Court held in Goss v. Lopez that students facing suspension from school must be afforded Fourteenth Amendment due process protection. In Goss, nine students were suspended from school for their supposed connection to school disturbances. One student was suspended for demonstrating with a group of students during a class and refusing to leave. A second student was suspended for attacking a police officer who was removing the demonstrating student. Other students were suspended in connection with a lunchroom demonstration that ended in property damage, and yet another student was suspended for being present at a demonstration. The administration never heard testimony as to why any of the students were suspended. The school administrators suspended the students under an Ohio statute that allowed the school administrator to suspend students for up to 10 days or to expel students for misconduct. The only requirement was that the administrator had to notify the parents of the student within 24 hours of the decision and state the grounds for which the student was being reprimanded. If expelled, the student or the student’s parents had the option of appealing the decision to the school board. Students who were merely suspended had no right to appeal the decision of the school administration.

The Court found the actions by the school unconstitutional. It reasoned that “the total exclusion from the educational process for more than a trivial period . . . is a serious event in the life of the child” and that procedural due process rights could not be disregarded by the schools. The Fourteenth Amendment prohibits a state actor from withholding life, liberty, or property from a person without due process. While property interests are generally not “created by the Constitution,” they are
defined by some other independent basis such as state statutes. In this case, because state legislation required free and compulsory education for school-aged residents, the students had a right to public education. Once that right was vested in the students, the state could not withdraw that right based on alleged misconduct without first following "fundamentally fair procedures to determine whether the misconduct has occurred." While the state had no constitutional obligation to require and provide education to students, once the state has created this right, it is a protected property interest held by the student.

The Court went further to describe the liberty interest that was at risk because of these suspensions from school. "Where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him," the state actor must engage in the procedures afforded by the Due Process Clause of the Fourteenth Amendment. Students suspended from school for misconduct would have a damaged reputation among their teachers, other students, future employers, and future educational institutions. For school administrators to threaten a student's liberty interest in such a way required the state to afford students their due process rights.

The Court refused to look at the weight or severity of the detriment to the student's interest in determining whether due process was required. Instead, the first step was to determine the "nature of the interest at stake," and then the severity of the detriment to the protected interest would be viewed as a factor in determining the form of the hearing that would be required. As long as the deprivation of the protected interest is not de minimis, the gravity or severity of the deprivation is not relevant, and the Due Process Clause affords protection of the interest. Even a suspension from the educational process for a short period of time is not de minimis because "education is perhaps the most important function of state and local governments." The Court decided, "[n]either the property interest in educational benefits temporarily denied nor the liberty interest in reputation, which is implicated, is so insubstantial that suspensions may constitutionally be imposed by any procedure the school chooses, no matter how arbitrary."

After determining that suspension from the educational process triggered the due process protection guaranteed to property and liberty interests, the next step is to determine what process is due. While there is no strict formula for determining the process due in each situation, it is clear that "at a minimum, deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case." The Supreme Court recognized, "[t]he fundamental requisite of due process of law is the opportunity to be heard." Additionally, due process requires that the decision maker be impartial to either side of a dispute. While students' procedural due process does not protect them from deserved suspension, it does allow them some type of notice and hearing before the suspension can be levied. Prior to suspension, the student must be given some notice of the accusations, and then if the student denies the charges, the school must afford an opportunity to explain. When the school offers the student an opportunity to be heard and the student refuses to participate, then the school may continue with disciplinary actions. Finally, while some more serious suspensions or expulsions may require formal procedures, the Court refused to require schools to allow students in all situations to obtain counsel, cross-examine witnesses, or call witnesses in the event of a short suspension.

1. **The Educational Process.** When a student challenges a suspension based on due process, the court must first determine if the student's deprivation amounts to the "total exclusion from the educational process for more than a trivial period."

Shortly after the Goss decision, the Tenth Circuit Court of Appeals developed an explanation of the educational process. In *Albach v. Odle*, the court was faced with a rule that automatically excluded any student who transferred from another school in his district from participating in athletics for one year. The property interest recognized in Goss was in the educational process. The *Albach* court defined the educational process as a "broad and comprehensive concept" and extended it to encompass extracurricular activities.

The court went so far as to state that the educational process "is not limited to classroom attendance but includes innumerable separate components, such as participation in athletic activity and membership in school clubs and social groups, which combine to provide an atmosphere of intellectual and moral advancement." While the court in *Albach* clearly determined athletics to be a part of the educational process, which is a protected property interest, it refused to acknowledge that the exclusion from participation in athletics is a deprivation of a property interest. The court offered no explanation for the determination.

2. **The Majority View.** The vast majority of decisions have held that students do not have a property interest in participating in high school athletics. While these courts are quick to dismiss procedural due process arguments in this context, they offer little rationale to support their decisions. Most courts hastily move these cases off the docket with a quick mention of stare decisis principles. However, even the decisions that form the foundation for this denial of due process, which has become firmly rooted in American jurisprudence, display scanty analysis for the denial.

When attempting to explain why athletic participation does not deserve due process protection, the court generally chooses from three basic arguments. First, many courts justify the denial by asserting that athletic participation is

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**THE MESSAGE THAT THE MAJORITY OF COURTS ACROSS THE UNITED STATES DELIVER TO STUDENTS IS "TOUGH LUCK."**
merely a privilege and not a right.68 But this traditional rationale is moribund. Specifically, the Supreme Court has held that determining the validity of a property interest by making a right versus privilege distinction is no longer legitimate in due process analysis.69

Second, the court may assert that athletic participation falls “outside the scope of protection”98 because students only have a mere expectation of participation and not a legitimate claim of entitlement.97 With this conclusory statement, these courts fail to explain the reasoning for finding that athletic participation is merely an expectation for students and not something to which they are entitled.98 Clearly, Goss held that students are entitled to the educational process and its educational benefits, thus triggering due process protections. Further, many courts agree that athletic participation is integral to the educational process,99 and research shows the myriad educational benefits accrued from athletic participation.100 If education is an entitlement and athletics are a fundamental aspect of education, then it is baffling that a court would summarily dismiss a student-athlete’s interest as a mere expectation without further explanation.

Moreover, Goss speaks of the educational process and the state statutes provide for compulsory and free public education—not academics alone.91 The distinction may be subtle, but education does not consist of only classroom activities.92 While the state statute is the starting point to determine that students are entitled to an education, the court must also look to “existing rules or understandings that stem from independent sources.”93 While a state may not have a statute providing for a compulsory athletic program, by looking at a school’s student handbook, athletic code, rules of the state athletic association, other state laws giving guidance in state athletics, and possibly even the school’s developed history or custom of offering athletics as part of its educational program, it is apparent that students have more than a mere expectation of athletic participation.94 The logical presumption is in opposition to that which the majority has taken; in fact, “[athletics] are ‘generally recognized as a fundamental ingredient of the educational process. . . .’ Thus it is apparent that the right to attend school includes the right to participate in extracurricular activities.”95

Lastly, these courts argue that the property interest protected is the entire educational process and not the individual parts.96 The highest court using this argument employed a broad conclusory statement that property interests are not vested in the individual aspects of the educational process.97 Other courts have focused on the language in Goss that discussed total exclusion from the educational process as a serious event in a student’s life. From this statement, these courts have crafted the notion that the entire educational process had to be denied before a student received due process protections.98 In Pegram v. Nelson, the court relied on this argument. The Pegram court discussed the educational process analysis as described by Goss and came to the conclusion that due process can apply to athletics, but then refused to extend the right to suspended student-athletes.99

Since there is not a property interest in each separate component of the “educational process,” denial of the opportunity to participate in merely one or several extracurricular activities would not give rise to due process.100 But nowhere in Goss does the Supreme Court focus on any requirement that suspension be from the total or entire educational process.101

One court made the argument that most other courts avoided, but then failed to acknowledge its ramifications. In McFarlin v. Newport Special School District, the court recognized the integral nature of athletics and the benefits that students acquire through participation, but refused to extend protection based on a pragmatic argument.102 Extending protection to athletics would “only result in a deluge of litigation over not only athletic participation, but also participation in activities that others may hold as dear as some do sports, such as band, theatre, or choir.”103 The court went on to explain that students just needed to accept the fact that in life, authority

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figures will make wrong decisions that will negatively affect them, and students need to deal with it. Unfortunately for this court, when the authority figures are state actors, they are not free to tell the students to “deal with it” without due process of law.

Restricting students’ rights for fear of opening the floodgates of litigation is contrary to the purpose of the Due Process Clause. The Court in Goss stated, “It would be a strange disciplinary system in an educational institution if no communication was sought by the disciplinarian with the student in an effort to inform him of his delinquency and to let him tell his side of the story in order to make sure that an injustice is not done.” Fairness can rarely be obtained by secret, one-sided determinations of facts decisive of rights. Secrecy is not congenial to truth-seeking and self-righteousness gives too slender an assurance of righteousness. No better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and opportunity to meet it.

Obviously, refusing to recognize student-athletes’ basic due process protections will keep lawsuits to a minimum and aid school administrations in fast disciplinary action. However, the consequences of this holding are to allow the schools to operate as “enclaves of totalitarianism” and the courts to “shed [the students’] constitutional rights . . . at the schoolhouse gate.”

While courts have crafted spurious rationales for denying basic due process rights to student-athletes, after analyzing the purpose for due process protections, the explosion of athletic participation since the 1970s, and the integral nature of athletics to the educational process, these decisions are not defensible.

Many Supreme Court justices and well-known scholars have eloquently described the purpose behind the protection that due process affords Americans against government action. Justice Douglas wrote, “It is not without significance that most of the provisions of the Bill of Rights are procedural. It is a procedure that spells much of the difference between rule by law and rule by whim or caprice. Steadfast adherence to strict procedural safeguards is our main assurance that there will be equal justice under law.”

Likewise, Justice Frankfurter declared that “[t]he history of American freedom is, in no small measure, the history of procedure.” Schools and lower courts may argue that affording due process protection to individual components of the educational process will be too burdensome, but Justice Thurgood Marshall would disagree. “[I]t is not burdensome to give reasons when reasons exist. . . It is only where the government acts improperly that procedural due process is truly burdensome. And that is precisely when it is most necessary.” Although government may act with good intentions the majority of the time, the benefits of procedure minimize accidental errors against the innocent.

“It is the best insurance for the Government itself against those blunders which leave lasting stains on a system of justice”—blunders which are likely to occur when the reasonableness and indeed legality of judgments need not be subjected to any appraisal other than one’s own.

When it comes to the deprivation of an interest so important to a young person, the Constitution demands that public schools afford the student-athlete at least minimal due process protections.

3. The Tiffany View. A few courts, while coming to the same result as the majority, have left the door open for student-athletes to enjoy the protections of the Due Process Clause. The court in Tiffany v. Arizona Interscholastic Association developed the clearest rationale for this view. In Tiffany, the court faced the disqualification of a high school athlete from his senior year of athletic participation because he was 19 years old. Tiffany played sports throughout high school and even grade school but was disqualified from competition during his senior year because of a statewide rule regulating the age of athletic participants. Tiffany had been held back during his early grade school years by his teachers and administrators, causing him to fail to meet the state high school athletic age requirement. Tiffany argued that his procedural due process rights had been violated, and the district court determined that Tiffany did have a property or liberty interest in athletic participation.

On appeal, the Arizona Court of Appeals held that Tiffany had not claimed any cognizable interest, and while in some circumstances high school athletes may have a constitutional right to due process, Tiffany’s situation did not raise any interest that reached the level of constitutionally protected property or liberty interest. The court noted that most decisions have found that the participation in high school athletics is not a constitutionally protected interest. However, the court did recognize that some court decisions have ordered schools to allow students to participate in athletics. “In the realm of constitutional law, there are very few absolutes.” Under certain circumstances, a student can prove that a suspension from high school athletics violated his property or liberty interest, but without showing damage to his future opportunities in higher education or employment, there was no deprivation of a cognizable property or liberty interest.

While Tiffany argued that he enjoyed participating in athletics, gained friendships while competing, and learned discipline from participation, these subjective interests were not enough to show a property interest. Even Tiffany’s incentive to maintain...
the required grade point average in order to stay eligible for athletics did not create a constitutionally protected interest. In order for high school athletic participation to be protected by the Due Process Clause, one must show damage to "later opportunities for higher education and employment." 

Additionally, in *Walsh v. Louisiana High School Athletic Association*, the Fifth Circuit Court of Appeals asserted that depriving a student of one year of athletic participation does not rise to the level of constitutional protection under the Due Process Clause of the Fourteenth Amendment, but the deprivation of a more lengthy period of time could require some procedural protections. Similarly, the court in *Pegram v. Nelson* explained that "[i]f the plaintiff's property interest in public education is considered to extend to the total 'educational process,' then, under certain circumstances, the need for some due process might arguably arise where a student is excluded from participation in extracurricular activities." 

**4. The Minority View**. While cases going in favor of suspended high school athletes are rare, some courts have found athletics to be such an integral part of a student-athlete's education that the school was not permitted to suspend the athlete from participation without due process. In *Boyd v. Board of Directors of the McGehee School District*, the Eastern District of Arkansas found that the student-athlete's ability to participate in high school athletics was a property interest protected by the Fourteenth Amendment's Due Process Clause. In *Boyd*, a high school football player named Orlando Johnson protested a pep rally with 24 other team members. These student-athletes had perceived racial discrimination in a homecoming queen election. Because of the team members' actions, they were suspended from the football team for the last four games of the regular season. The court in *Boyd* found that participating in athletics was integral to the educational and economic future of the student-athlete. Johnson's interest was something more than a desire to participate in a single season of interscholastic athletics without the belief that and desire of realizing any tangential benefits accruing to him in the future. Therefore, the procedural due process requirement protected the student-athlete's interest in participating in athletics.

In *Duffley v. New Hampshire Interscholastic Athletic Ass'n, Inc.*, the Supreme Court of New Hampshire declared that because athletics are such an important aspect of the educational process, a student's right to participate is protected by the Due Process Clause. In *Duffley*, the state high school athletic association held a 19-year-old student and member of the high school basketball team ineligible for his senior season of basketball. The association's rules stated that a student was not eligible to participate in athletics for more than eight consecutive semesters after the eighth grade. Duffley had attended school for a portion of the first semester of his sophomore year of high school and then withdrew from school for the remainder of the year after becoming ill. Based on these facts, the state high school athletic association determined Duffley was ineligible to participate in athletics for the last semester of his senior year. The association's rules allowed its decision to be appealed by the principal of the student-athlete's school. Duffley's principal conducted an appeal and requested that Duffley receive a medical exception for the two semesters that he did not attend school or receive any academic credit. The association denied the appeal by a vote of 12–1 and gave no reasons in support of its decision.

The court in *Duffley* declared, "it can hardly be argued that high school students wishing to participate in interscholastic athletics shed all of their constitutional rights at the entrance to the [state high school athletic association]." Next, the court turned to the main question of whether a student had a protected property interest in athletic participation at the high school level. The court explained, in making this determination, we rely upon not only statutory and regulatory pronouncements concerning the role of athletics in our educational process, but also a common sense recognition of the benefits, both educational and economic, that frequently accrue to those high school students who participate in interscholastic competition.

The court referred to regulations by the state department of education that allowed for "pupil activities, including athletics" to be in the school curriculum. Additionally, the stated goal of the state high school athletic association was to "establish the state athletic program as an integral part of the entire school program" and that high school athletics "have a unique contribution to make to the educational program of the entire school program." The court determined that athletics played an important and integral role in the educational process of students and that there was a right to participate in athletics, not merely a privilege. Specifically, a student's access to further education after high school may be determined by athletic ability. Therefore, participation in high school athletics must be viewed as a right of high school students that is entitled to protections by the Due Process Clause.

While not framing its holding in Fourteenth Amendment property interest language, the court in *Lee v. Florida High School Activities Ass'n, Inc.* refused to allow a state high school athletic association to ban a student-athlete from participating in interscholastic athletics without due process. The school had refused to allow the student to participate in athletics based on an association rule that limited student participation to four consecutive years from the time the student began his first year of high school. The student had missed a year of school to work to aid his family's...
financial situation. Based on these facts, the school and state high school athletic association ruled that the student was not eligible to participate in interscholastic athletics when he returned to school. The court found that the actions of the state high school athletic association were clearly state action for constitutional purposes. The court found that because participation in high school athletics would enhance the student’s chances of being admitted to college and perhaps receiving a scholarship, the state high school athletic association could not enforce the ineligibility determination without first allowing the student an opportunity to present his case. While the court did not declare that the student had a protected property interest in high school athletic participation, it nonetheless determined that the high school athletic association was a state actor that deprived the student of his due process rights.

In Florida High School Activities Ass’n v. Bryant, the court rejected the appeal of the state high school athletic association from a final judgment that allowed Aaron Bryant to participate in interscholastic athletics. The trial court faced the same athletic association four-year rule that was the center of the Lee decision a year earlier. The court reasoned that athletics were “an important and vital part of [the student’s] life, providing an impetus to his general scholastic and social development and rehabilitation from his prior problems as a juvenile delinquent. It has resulted in the improvement of his grades, attitude, self-confidence, discipline and maturity.” Again, while the court refrained from phrasing its decision in property interest language, it found that the right of a student to participate in athletics could not be taken away from the student without a fair hearing.

III. PROPERTY INTEREST

While the majority of the courts have faithfully decided cases dealing with student-athletes’ right to due process by simply falling back on the principles of stare decis, these courts fail to interpret the Supreme Court’s position on students’ due process rights correctly. The Supreme Court has made it clear that due process interests in property and liberty are not stagnant interests. To the contrary, due process interests can change with society’s expectations and experiences. Now, over three decades into a chain of stare decisis on this issue, it is time for courts to look at the overwhelming research and experience that has been gathered on the importance of athletics to the educational process and recognize due process rights for this integral aspect of education.

The Supreme Court in Goss extended due process protection to a student’s involvement in the educational process beyond the classroom, despite what the lower court’s narrow view of education would lead one to believe. While lower courts continue to view participation in athletics as a nonproperty interest, scholarly research showing the integral part that athletics play in the educational process continues to mount. While academic pursuits are clearly fundamental to education, athletic participation enhances the educational process by offering the student development in areas and in ways that academics may fail. Since the 1970s, when the first line of decisions found that students had no due process interest in athletic participation, the landscape of high school athletics has changed drastically. The number of students involved in athletics has increased exponentially. Overwhelming amounts of research have been compiled that lay out the benefits of participation in athletics. These benefits include an increased likelihood of overall academic success, an increased likelihood of completing school, the development of positive character traits, and better health and overall well-being. This research can help the court better understand the integral nature of athletics to a student’s educational process. Moreover, students should be afforded due process protection even under the view held by the Tiffany court that athletic participation only becomes a property interest if the student-athlete can prove a deprivation of future educational or employment opportunities. Current research makes a compelling case that all student-athletes (and not just elite athletes) are deprived of future educational and employment opportunities when deprived of the opportunity to participate in athletics.

While most courts dismiss a high school student-athlete’s argument that the Due Process Clause of the Fourteenth Amendment triggers procedural protection when a school encroaches on participation in athletics, many of the same courts concede that high school athletics are an important and even integral aspect of the educational process. Modern courts should look beyond the somewhat stilted “statutory and regulatory pronouncements concerning the role of athletics in our educational process” and engage in “a common sense recognition of the benefits, both educational and economic, that frequently accrue to those high school students who participate in interscholastic competition.”

A reexamination of the role of high school athletics in the educational process reveals that the prevailing view of procedural due process rights has failed to “gather meaning from experience” and has become “stagnant.” Courts that cling to this view by simply defaulting to the decisions of past courts may believe that “(s)students should recognize that it is a fact of life that on occasion all people are subjected to arbitrary and unjust decision making.” The Supreme Court of the United States would not agree with this view of student-athlete’s due process rights.

In our system, state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students in school as well as out of school are “persons” under our Constitution. They are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the State.

The better view was summarized by a court holding to the minority view when it stated, “it can hardly be argued that high school students wishing to participate in interscholastic athletics shed all of their constitutional rights at the entrance to the [state high school athletic association].” The remainder of this article is dedicated to examining the integral nature of high school athletics to the educational process through a discussion of research on the benefits of athletic participation. Participation in athletics has been thoroughly researched, and its benefits upon the student-athlete are well documented. While it is
clear that the majority of courts cling to the idea that participation in athletics are not constitutionally significant, the purpose here is to look beyond the case law, rules, and regulations and engage in a "common sense recognition of the benefits, both educational and economic" that students gain from participation in high school athletics.997

A. Changing Landscape of Athletics

The Supreme Court has determined that due process interests can change with society,98 and one would be hard-pressed to find an area in education that has seen a more drastic transformation than high school athletics.998 While the role of athletics in the educational process may not have been essential in the 1970s when the courts began to rule on a student-athlete's due process interests, more than 30 years later, athletics have become essential to the education of students across America.999 Today, athletics have become a major source of opportunity for students to attend college,200 and the sheer number of students participating and acquiring the benefits of athletic participation beckons the courts to reassess the relation between athletics and the educational process.201 Additionally, the role of athletics has crossed gender lines since the 1970s and has become vitally important to the lives of young women across the country.202

1. General. In America today, the time and energy that students, schools, and communities pour into athletics reveal the importance that athletics play in today's educational process.203 In the 1971-72 school year, fewer than four million high school students across the nation participated in athletics.204 Today, over seven million high school students participate in athletics across America.205 In just the last year, nearly 150,000 additional students played high school sports, raising the actual percentage of the student body that participated in high school athletics to over 53 percent.206 Today, colleges and universities across America award approximately $1 billion in athletic scholarship money to student-athletes.207 The executive director of the National Federation of State High School Associations, Robert F. Kanaby, asserts that participation in high school athletics "will have positive effects on [students'] long-term personal success."210 More specifically, "participation in athletics... helps students succeed in life."211

The consistent increase in participation among the youth of our country and the fact that well over half of all enrolled students are competing in high school activities are true testaments to the impact these activities have on millions of lives across the country.212

The sheer number of high school students now participating in high school athletics since the year that the majority view was set forth213 cries out for the current courts to reassess whether this majority view has grown "stagnant."214

2. Females and Athletic Participation. While fewer than 300,000 girls played high school sports during the 1971-72 school year, today almost three million girls participate in high school athletics.215 Since Congress enacted Title IX in 1972216 and its "mandatory compliance" date in 1978,217 participation by females in high school athletics has increased by 875 percent.218 Additionally, in that same period of time, women's college athletics have seen a 437 percent increase in participation.219 Stated another way, since 1972, participation by females in high school athletics has increased from 1 out of every 27 girls to 1 out of every 2.5 girls.220 Even as late as the 1980s, female participation in high school athletics made up only 35 percent of student-athletes.221 Females now comprise over 41 percent of high school student-athletes.222 From the 1980s until today, participation by female student-athletes in sports such as soccer, softball, and track and field has dramatically increased.223

Additionally, the opportunity for female high school student-athletes to participate in college athletics has exponentially increased since the 1970s and 1980s.224 In 1970, only 16,000 women participated in athletics on the college level, while today the number of women participating in college athletics is over 180,000.225 In 23 years, women's college athletics have experienced a 137 percent increase in participation from 68,062 in 1981 to almost 161,000 in 2004.226 While in 1977-78 there were only approximately 1,400 teams in all of American college athletics for women, today there are over 8,700 teams affording women the opportunity to participate in athletics at the college level.227 In the years covering 1988 to 2002, NCAA schools added 3,127 new sports while dropping 1,275, for a gain of 1,852 new women's athletic opportunities.228 During the 2003-04 school year, an average Division I school distributed $1,388,100 in athletic scholarships to women, and each Division II school averaged $340,000 in women's athletic scholarships.229 Clearly, the landscape of women's athletics has changed dramatically since the time the courts of the 1970s and 1980s crafted their view of the high school student-athlete's due process rights.230

Along with the educational231 and employment benefits that females receive from participating in athletics,232 researchers have discovered overwhelming evidence that participation in athletics is an integral part of a young woman's life that should not be neglected.233 Female student-athletes graduate at higher rates and obtain better academic results than girls who do not participate in athletics.234 For female high school athletes who participate in college athletics, graduation rates are higher than those of nonathletes.235

Additionally, a 15-year study showed that females who participated in athletics had significantly fewer incidents of breast cancer than nonathletes.236 A study by researchers at Purdue University found that females who participate in high school athletics had considerably higher bone density then females who did not participate and concluded that participating in high school athletics could aid in the prevention of osteoporosis.237 These findings were supported by a study that found that participation in athletics—not calcium consumption—is the best predictor of bone mineral density.238 Studies have found that female high school athletes have a more positive image of their body and are less prone to engage in drug use, to smoke, or to commit suicide than females who do not participate in athletics.239 Research also has found that females actively participating in high school athletics tend to avoid engaging in sexual behaviors during high school.240 More specifically, high school female student-athletes are "less than half as likely to get pregnant as female nonathletes... more likely to report that they have never had sexual intercourse than female nonathletes... and more likely to experience their first sexual intercourse later in adolescence than female nonathletes."241
Athletic participation has been found to be vital to the enhancement of adolescent female’s mental health. Girls who participate in athletics experience higher levels of confidence and tend to experience less depression than girls who do not participate in sports. With this increase in college scholarships and participation opportunities, the female student-athlete now has a larger financial and economic stake in high school athletic participation.

**B. The Educational Process Is Not Purely Academic**

The Supreme Court in Goss found that students suspended from the educational process for a period as short as 10 days had to be afforded due process protection. The Court stated,

> Neither the property interest in educational benefits temporarily denied ... is so insubstantial that suspensions may constitutionally be imposed by any procedure the school chooses, no matter how arbitrary.

The Court did not declare that academic benefits were the basis for protection; to the contrary, the Court used much broader language that encompassed the benefits that are derived from the educational process and not just the academic classes. The Tenth Circuit Court of Appeals has laid out an explanation of the “educational process” that proves to be very helpful.

The educational process is a broad and comprehensive concept with a variable and indefinite meaning. It is not limited to classroom attendance but includes innumerable separate components, such as participation in athletic activity and membership in school clubs and social groups, which combine to provide an atmosphere of intellectual and moral advancement.

The Tenth Circuit decided, without explanation, that athletics were not afforded due process protection under this definition of educational process. Thirty years later, in light of the changed landscape of athletics and the abundance of scholarly research pointing to the importance of athletics to education, this definition of the educational process bolsters the view that the Supreme Court would find that due process rights are not limited to the academic aspects of education.

While the lower courts often dismiss the constitutional rights of students as if students hold a lower status under the Constitution, the Supreme Court has expanded the rights that students are entitled to under the Constitution. The Court has often used strong language to express the depths of its disapproval of public schools that deny students’ basic rights guaranteed under the Constitution. Based on the Supreme Court’s view of the dynamic nature of due process interests and its view that students do indeed have due process rights based on their property interest in the educational process and educational benefits, the nature of athletic participation should be reexamined.

Addressing the importance of athletics to a student’s education, Supreme Court Justice Byron White proclaimed,

> Sports and other forms of vigorous physical activity provide educational experience which cannot be duplicated in the classroom. They are an uncompromising laboratory in which we must think and act quickly and efficiently under pressure and then force us to meet our own inadequacies face-to-face and to do something about them, as nothing else does. ... Sports resemble life in capsule form and the participant quickly learns that his performance depends upon the development of strength, stamina, self-discipline and a sure and steady judgment.

Some schools have forgone the total development of students while exclusively focusing on the academic aspects of education. However, this view of education fails to recognize that there is a difference between a student gaining an educationally complete and not simply an academically complete experience during high school. Educators realize that athletics and academics have a "left-hand-right-hand relationship. Because a person can live with one hand, does that make the other a luxury?" The educational process is not merely classroom activities and textbook assignments; the courts “cannot separate academics and [athletics]. They are all part of the same program, and that program is education.” In America, the role of athletics is inseparable from the educational process because athletics are "a training ground for life." Athletics serve an integral role in the development of students that mere academics do not provide because sports are “a social theatre in which youth learn to aspire higher, work hard and sacrifice, perform with a team, and overcome defeat in their pursuit of the American Dream.” The “positive outcomes of involvement are inevitable.” Focusing only on academics can be unhealthy to a student’s development and attainment in the educational process.

Those who believe that activities such as athletics are nonacademic and thus somehow inferior in the educational process are mistaken. Indeed, the courts tend to view athletic participation as not integral to the educational process, and many schools disregard the importance of athletics by targeting these activities for budget cuts during times of financial hardship. But these courts and schools ignore the host of positive effects that athletics have on students. After viewing the overwhelming benefits that students gain from participation in athletics, the focus should be on finding ways to increase student involvement, not decreasing or restricting participation. Those with a significant interest in the total development of students need to look beyond academics when accessing the educational process and recognize the
role that athletics play. Fortunately, the studies showing the positive effects that athletic participation has on high school students are abundant.

1. In-School Academic Benefits. Performance in school is closely connected to participation in athletics. There is little doubt that there is a positive connection between athletic participation and such "school related outcomes such as GPA and students' academic self-confidence" and the student's overall academic achievement. Students who begin participating in athletics tend to earn higher grades than when they did not participate in athletics. More importantly, those students who are typically less disposed to high levels of academic achievement experience the greatest academic impact from participation in athletics. These positive benefits have been discovered in regard to minority students. Athletes tend to set higher educational aspirations, possess better self-esteem, and gravitate toward college enrollment and college graduation. Athletes tend to enjoy enhanced adult earnings. Participation in athletics provides students with "positive experiences that enhance student academic success and the basic value of achievement." High school teachers attribute these positive benefits experienced by student-athletes to the "discipline and work ethic" that participation in sports requires from the student.

It is possible that in sports the emphasis on hard work, achievement, self-improvement, present preparation for future competition, persistence, etc., carries over from the playing field, thereby increasing motivation and aspirations in other areas including post-high-school career orientations.

Student-athletes tend to have higher levels of motivation in school because they must maintain a minimum standard of academic achievement in order to continue playing sports. Participation in athletics has a positive impact on how hard the student works in school, how prepared the student comes to class, and how positively the student perceives his "life chances." Athletics have been shown to increase student-athletes' "overall interest and commitment to school" as well as better the student-teacher relationship along with increased parental contact with the school. While there may be a popular stereotype in the United States that high school student-athletes are "dumb jocks," the research proves that this is a myth.

2. Drop-Out Rates. Not having athletics as part of the educational process is "like cutting off your nose to spite your face... because [ ] sports keep many kids in school who might otherwise have dropped out.

Athletics is not just fun and games... most kids, even if they're not the stars, enjoy being a part of a team. Ninety-five percent of them are never going to get a college athletic scholarship, but that little bit of glue that comes from being on a team, even if it's a jayvee or freshman team, is what makes some kids want to come to school every day.

Research reveals that involvement in school activities is the most important factor keeping students from dropping out. High school student dropouts have an increased probability of subsequent criminal behavior, lower occupational and economic prospects, lower lifetime earnings, and an increased likelihood of becoming a member of the underclass. The greatest predictor for a student's increased involvement in school and the student's decreased probability of dropping out of school is participation in athletics.

3. Positive Character Traits. Research shows that student participation in athletics aids in the development of a significant character trait needed in both later educational and employment ventures—leadership. Student-athletes tend to develop appreciably higher levels of leadership abilities than nonathletes. While students who don't participate in athletics may indeed have leadership ability, the classroom setting does not offer them the active training to develop this important skill. Specifically, student-athletes engage in leadership roles with their peers during practices and competition, and they are under the constant purview of leadership models, their coaches.

"Leadership may be defined as the capacity to guide others in the achievement of a common goal. Decisiveness, determination, loyalty, self-efficacy, and self-discipline are considered some of the attributes of effective leaders." Participation in sports offers the student-athlete "the opportunity to develop and display" this important trait. The evidence strongly suggests that athletic participation increases or strengthens the student-athlete's leadership ability. "If developing leadership skills—and the psychological characteristics associated with leadership—is indeed one of the goals of the educational system, and participation in sports fosters the acquisition of such skills, then maintaining athletic programs is strongly recommended."

Sports offer the student-athlete experience in working as a team, setting goals, and pursuing those goals through adversity. Students' academic objectives are much more than many educators realize. Participation helps develop basic values such as self-respect, self-esteem, self-confidence, and competitive spirit; further the participant learns the value of teamwork and experiences how to win and lose. These intangibles certainly are educational experiences and as important in a student's total preparation for being a productive citizen in later life as grades earned in the academic classroom.

Society expects students to develop certain skills such as "striving for excellence, fair play, sportsmanship, hard work, and commitment to a goal," which are developed through athletic participation. The deprivation of the right to participate in
athletics results in the loss of "school spirit, morale, self-esteem and skill development." These activities are "inherently educational" and uniquely support the educational process because athletics provide practical experience in "teamwork, sportsmanship, winning and losing, hard work... self-discipline, [and] building self-confidence and developing skills to handle competitive situations." School administrators have supported the integral nature of athletics in the educational process. As one public school superintendent explained, "I really believe that... athletics are that important to the education of a child. Those kids learn tremendous lessons in teamwork, sharing and discipline, and I'm convinced these lessons help them later in life." 4

4. Health and Other Benefits. One of the most important benefits that students gain from participation in high school athletics is good health. Studies have found that such participation can help "build and maintain healthy bones, muscles and joints... control weight, build lean muscle and reduce fat... prevent or delay the development of high blood pressure... and reduces feelings of depression and anxiety." President Bill Clinton ordered the secretary of Health and Human Services and the secretary of Education to identify "strategies to promote better health for our nation's youth through physical activity and fitness." The results of the study indicated that it must be a national priority "to promote participation in physical activity and sports among young people." 3

The third leading cause of death among adolescents between the ages of 15 and 24 is suicide. Over the last 40 years, this rate among adolescents has almost tripled. "Athletic involvement is associated with protective factors that have been generally found to reduce suicide risk among young people: e.g., lower rates of illicit drug use, greater social supports, reduced risk for depression." Research shows that students who participate in high school athletics "reported significantly lower rates of suicidal ideation and behavior than their nonathlete counterparts." While current research suggests that a student's participation in a structured extracurricular activity is "fundamental to students' academic motivation and achievement," participation is also integral to their emotional well-being. The importance of students having the opportunity to participate in athletics, a structured extracurricular activity, is more important to today's student who has 40-50 percent of his or her day comprised of free time. Most students spend the vast majority of this free time on unproductive activities that lead to deviant activities and antisocial behavior. Further, a student's inability to participate in athletics, a structured extracurricular activity, translates to lowered academic performance and negative behavioral tendencies. Additionally, student-athletes tend to have a better grasp of boundaries for disciplinary purposes because they must conform to strict codes of conduct to participate on the team. These positive effects from athletic participation also can be seen on inner-city students.

Student athletic participation develops "self-efficacy, self-confidence, and feelings of competence by virtue of the mastery of skills and talents that such participation engenders." and the development of these virtues through athletic participation is related to the performance of students not only during school but also after graduation. While participation in athletics increases the student-athlete's level of self-confidence, that increased confidence carries over into the student's life after high school. The development of confidence in one's competence is key to proper student development and can be traced back to the amount of the student's participation in high school physical activity. Additionally, student-athletes develop important planning and decision-making skills because they are forced to balance schoolwork, outside responsibilities, and game and practice schedules.

While many students feel alienated from their high schools, participation in athletics enriches the school experience for students. The "prestige and popularity" that come with being a student-athlete could result in an increased self-esteem and higher career goals. This increased visibility of the student-athlete could result in the increased quality and quantity of "career counseling and encouragement" at school. Participation in sports even has a positive effect on relations between different racial and ethnic groups. Students who participate in athletics receive such important benefits to their school experience that educators and policymakers should take notice of the research, develop the quality of athletics at schools, and integrate ways to increase student participation in athletics. Clearly, "[the athletic role enlarges the academic role in the educational process and the achievement of educational benefits."

C. The Tiffany Standard

The court in Tiffany explained that in order for a student's interest in high school athletic participation to rise to a level necessitating due process protection, a significant injury to "latter opportunities for higher education and employment" must be demonstrated. While it may be easier for star athletes competing for a college scholarship to show a significant injury to their opportunity for higher education, there is something fundamentally unfair about providing constitutional protection to some students but not others based on athletic ability alone. Fortunately, since the decisions that have set off this chain reaction of stare decisis, overwhelming amounts of research have been done on the significant future educational and employment benefits that all high school student-athletes gain from participation in athletics—not just the elite athletes. Evidence is mounting about the educational and labor market benefits that are gained because of a student's participation in high school athletics. Students who participate in high school athletics experience significant advantages in both employment and education when compared to students who do not participate in sports. The research in this area reveals that participation in athletics "has a stronger positive impact on postsecondary outcomes" than any other extracurricular activity, along with higher levels of "academic achievement, educational and occupational aspirations and attainments, self-concept, and popularity." These skills help the student-athlete become a more productive worker and one who will persevere in obtaining higher education if needed. Benefits from participation in athletics show that the student-athlete will have a higher GPA, a better "personal-social development," a higher overall academic performance, fewer discipline problems, and a lower probability of dropping out of school. These are all skills that future employers and educators expect out of students and
are specifically targeted and developed through participation in athletics.362

1. Educational Benefits. One of the main goals of the educational system in the United States is to prepare students for college.359 Nonathlete students attempting to gain admittance into higher education institutions experience more difficulties than athletes.354 Specifically, some universities take great pride in the number of former high school athletes in their student bodies.355 Research has found that those students who characterize themselves as “jocks” obtain higher grade point averages and have a better opportunity of attending college than the rest of the student body.356 Research is proving that “[s]ports and schooling are inextricably linked.”357

Many students who would not otherwise attend college decide to attend because they aspire to continue participating in athletics after high school.358 More specifically, many student-athletes who would not otherwise attend college do so because they receive an athletic scholarship.359 Research uncovered that high school athletes are more likely to obtain a postsecondary education eight years after graduation than nonathletes.360 High school student-athletes are more likely than nonparticipants to graduate from college by 25–35 percent.361 These findings indicate that “traditional test scores and high school rank do not fully capture an individual’s ability”362 and that athletic participation plays an integral role in determining a student’s future educational and employment benefits.363 One explanation for these results is that the student-athlete is exposed to unique training that is beneficial after high school, which student-nonathletes do not receive through mere classroom experiences.364

Student-athletes express interest in attending college after high school in greater proportions than the general student body.365 A greater number of student-athletes intend on enrolling in college than nonparticipants, and this connection is seen clearly with those students otherwise not disposed toward attending college.366 While participation in high school athletics is directly connected to the greater educational achievement and higher wages later in life, there is no evidence that this participation has any negative effects on the student in his or her future educational and employment benefits.367

2. Employment Benefits. While many educators have focused their attention on academic achievement,368 a student’s participation in athletics provides the student with “opportunities to acquire, develop, and rehearse attitudes and skills from which status goals evolve and upon which future success is grounded.”369 Eight years after graduation, high school athletes also are employed at higher levels than nonparticipants in high school athletics.370 Additionally, those students who participated in high school sports earn more money than students who did not participate in sports.371 Studies have shown that by the age of 32, men who participated in sports during high school were earning 31 percent more money in their career than workers who had not involved themselves in athletics during high school.372 An additional study, which tracked the effects of high school athletic participation on high school students who graduated in 1972, also found that those who had been involved in high school athletics earned higher wages than nonparticipants.373 Furthermore, greater involvement in athletics tended to increase the amount of money earned in life.374

IV. LIBERTY INTEREST

The Supreme Court in Goss not only laid the groundwork for student-athletes to protect their property interest in athletic participation, but the Court also made it clear that when a school deprives a student of the educational process and its benefits that a liberty interest also may be at stake.375 The Court in Goss reaffirmed its stance on liberty interests requiring due process protection.376

“Where a person’s good name, reputation, honor, or integrity is at stake because of what the government is doing to him,” the minimal requirements of the Clause must be satisfied.377

The Court went on to explain that if the charges against the students were maintained by the school and recorded, the charges against the students could “seriously damage the students’ standing with their fellow pupils and their teachers as well as interfere with later opportunities for higher education and employment.”378 Public schools unilaterally deciding whether a student had engaged in misconduct without any process “collides with the requirements of the Constitution.”379

Shortly after the Goss decision, the Supreme Court further explained its stance on the deprivation of a liberty interest.380 In Paul v. Davis, the Court held that the mere act of defamation by the state actor was not enough to trigger due process protection.381 The defamation had to occur in connection with some other loss, such as employment termination or educational suspension.382 The Court in Paul stated that this holding was consistent with Goss because the reputational harm that occurs in the context of the educational process is connected with the student’s suspension.383

A student-athlete could not successfully make this argument in all scenarios when a school denies the student participation in athletics.384 For instance, rules that would suspend or ban a student from athletics based on age,385 transfer-ability,386 home-school eligibility,387 or semester-eligibility388 do not typically raise the issue of a student’s reputation. But one could argue that integrity is marred if a school questions the student’s motives for transferring. Generally, arguing deprivation of liberty interests under the aforementioned rules does not seem to be as persuasive as a property interest argument, but the door is open for such an argument to be made.389

In many situations, the student does have a viable liberty interest at stake.390 For instance, if a student is suspended or banned from athletics because the school accuses the student of violating a drug, alcohol, or some behavioral policy, the student’s liberty interest is implicated.391 Even in situations where a school suspends a student for grades,392 the student’s reputation and good name will be affected adversely, therefore securing the protections of due process.393 In each of these situations, if the school made an error in determining that the student violated a behavioral or academic standard, the student-athlete’s standing
in the eyes of teachers, peers, family members, and possibly members of the community will be adversely affected. More damaging to the student would be the effect of this reputational harm on the student’s future employment and educational goals. Shakespeare may have summed up the irreparable nature of reputational harm when he said,

Good name in man and woman, dear my lord, is the immediate jewel of their souls: Who steals my purse steals trash; ’tis something, nothing; ’twas mine, ’tis his, and has been slave to thousands; but he that filches from me my good name robs me of that which not enriches him, and makes me poor indeed.

While schools have a need to discipline students, the harm caused by unilateral disciplinary actions makes the need for procedural protections imperative.

**PARTICIPATION IN HIGH SCHOOL ATHLETICS IS INSEPARABLE FROM THE EDUCATIONAL PROCESS AND OFFERS BENEFITS TO THE STUDENT THAT DO NOT END AT GRADUATION.**

High school athletic participation add several independent benefits to the educational process, but it also enhances the academic aspects of the educational process. While schools across the nation continue to offer athletics as part of the educational process, students are participating in record numbers. High school athletic participation is integral to both the educational process and the lives of these students. It is unconscionable that in the twenty-first century a public school can suspend or even dismiss student-athletes from athletic participation without telling them what rule they violated, without allowing the student-athletes to explain their side of the story, or without permitting them to appeal their position to an impartial party.

The Supreme Court has laid the foundation for due process protection of high school student-athletes in regard to athletic participation. In *Goss v. Lopez*, the Supreme Court made it clear that students have both a property interest and, in some situations, a liberty interest in the educational process. The Court avowed, neither the property interest in educational benefits temporarily denied nor the liberty interest in reputation, which is also implicated, is so insubstantial that suspensions may constitutionally be imposed by any procedure the school chooses, no matter how arbitrary.

While the Supreme Court found that suspensions for a period of time as short as 10 days required the school to at least minimal due process, the lower courts continue to deny due process protection to student-athletes. The Supreme Court did not hold that suspensions must be from every aspect of the educational process before the Constitution protected a student. In fact, the Court clearly stated that public schools could not impose suspensions without due process in the context of educational benefits.

The educational process is very broad and contemplates activities outside the classroom. The research overwhelmingly supports the finding that participation in high school athletics is inseparable from the educational process and offers benefits to the student that do not end at graduation. To the contrary, studies show that athletic participation enhances a student’s chances of success at both education and employment after high school.

While the doctrine of stare decisis is a cornerstone of the American legal system, the law should not grow stagnant. Specifically, the courts cling to outmoded notions when the culture and experiences of a nation have drastically changed. It is now apparent that due process rights should be expanded beyond the boundaries drawn 30 years ago. Today, athletics in high schools across the nation play a larger role in the lives of students than the courts of 30 years ago could have imagined possible. Scholars have mounted stacks of evidence and research that cry out for protection of a student’s right to athletic participation. While the vast majority of opinions delivered rest solely on stare decisis, the cases that are being relied upon inadequately support denying a student-athlete’s due process protection. The modern court should engage in “a common sense recognition of the benefits, both educational and economic, that frequently accrue to those high school students who participate in interscholastic competition.”

The courts cannot analyze the research on participation benefits, view the statistics on current student participation, and examine the manner in which public schools have intertwined athletics and academics to create the current educational process and then flippantly dismiss student-athletes’ property interest claim. Student-athletes have a protectable interest in athletic participation, and the courts’ current reasoning for denying protection is unsatisfactory. While courts may ultimately desire to maintain the efficiency of public schools’ disciplinary procedures, ignoring the rights of a student-athlete to achieve this goal unashamedly contradicts the purpose for our constitutional due process protections.

The authors wish to acknowledge support through the University of Tulsa College of Law Faculty Summer Research Grant Program. They also wish to thank University of Tulsa law student Kelsey May for her help in putting the finishing touches on this article. Additionally, Professor Yasser would like to acknowledge his long-time faculty assistant and all round enabler Cyndee Jones.

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