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TIME

U.S. Education

Is a Bad College Education Illegal for the NCAA?

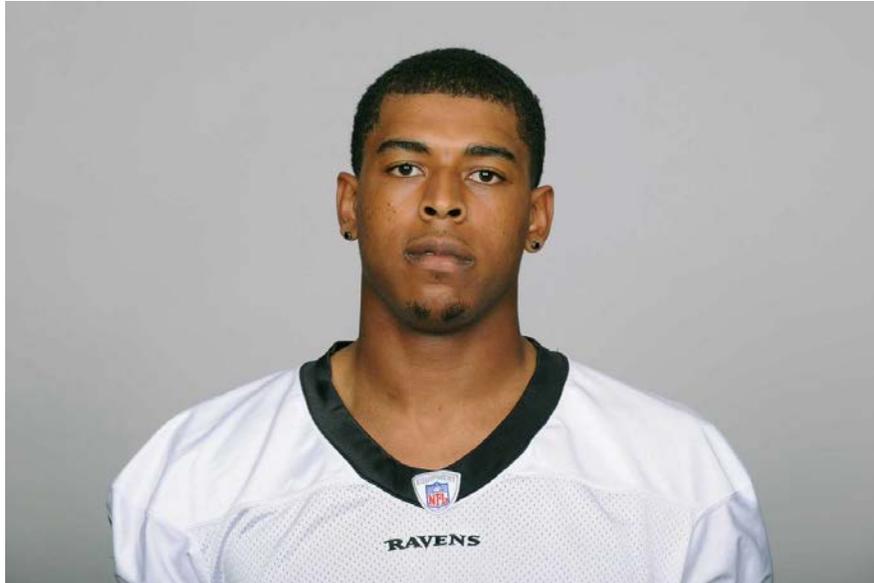
Former North Carolina football player Michael McAdoo is suing the school over sham classes. Does the case have a shot?

By Sean Gregory @seanmgregory

Nov. 11, 2014

When the University of North Carolina was recruiting Michael McAdoo, Tar Heels head coach Butch Davis made a pledge that helped lure the high school football star to Chapel Hill. “I can’t guarantee that Michael will play in the NFL,” Davis told McAdoo’s mother, grandmother, and grandfather while at their home in Antioch, Tenn. “But one thing I can guarantee is that he will get a good education at the University of North Carolina.”

It didn’t quite work out that way. After enrolling at UNC and playing defensive end during the 2008 and 2009 seasons, the NCAA ruled McAdoo ineligible because he received improper help from a tutor in writing an African-American studies paper. That sort of extra assistance was all too common for top athletes at the highly-regarded public university. According to a devastating report released in October, former federal attorney Kenneth Wainstein found that between 1993 and 2011, over 3,100 UNC students took “paper” classes in the school’s Department of African and Afro-American Studies. These courses required no classroom time, little work, and produced inflated grades that were often assigned by a department administrator, not a faculty member. Of the 1,871 paper classes taken by athletes between 1999 and 2011, 63.5% of the enrolled students were football or men’s basketball players.



Michael McAdoo in a 2011 picture taken as a member of the Baltimore Ravens

McAdoo says he was put in such sham classes against his will. So he's added another headache for the beleaguered school. On Nov. 6, McAdoo filed a class action suit in federal court against the University of North Carolina, on behalf of himself and other football players on scholarship between 1993 and 2011. The suit accuses North Carolina of fraud, deceptive trade practices, and breach of contract: the school promised a legitimate education in exchange for athletic services, but allegedly failed to deliver. "Legal action was in the ether when I first met Michael earlier this year," says Jeremi Duru, one of McAdoo's attorneys (McAdoo declined to comment directly). "But the Wainstein report put the engines in motion."

The complaint says that "almost immediately after arriving at UNC to begin his freshman year, Mr. McAdoo realized that the promises Head Coach Davis and his assistants made about the football's program's commitment to academics were false." McAdoo says he expressed interest in becoming a criminal justice major, but football players were steered into three options for a major: Exercise Sport Science, Communications, or African-American Studies. Per the complaint: "When Mr. McAdoo asked why he should not pursue other majors, he was told these were the only majors that would accommodate his football practice and playing schedule, and that the football program had 'relationships' with professors in those departments." McAdoo, who majored in Exercise Sport Science and African-American Studies, says that an academic counselor gave him and his teammates pre-assigned course schedules that included paper classes. "Mr. McAdoo had no role in selecting the courses," says the complaint. "The same thing happened every semester Mr. McAdoo attended the University of North Carolina."

UNC said in a statement that "the University will reserve further comment until we've had the opportunity to fully review the claims."

Davis, who coached UNC from 2007-2010 after being the head coach at the University of Miami and the NFL's Cleveland Browns, tells *TIME* that he wasn't aware of the sham classes when he promised McAdoo a good education. (Davis was fired after the 2010 season, in part because the turmoil surrounding the program after some of the academic impropriety came to light). "After we recruit the athletes, then everything about their academics was handled outside the athletic department," says Davis, who is now an analyst for ESPN. "Their classes, their degree programs, their teachers, their mentors, their

tutors, and everything fell completely under the supervision of the university academic advisement or career counseling program. The only role that I or my assistant coaches had is they would ask us from an academic standpoint ‘what days would you like to practice and what times would you like to have your athletes?’ ... Our coaching staff didn’t know that there was anything corrupt, fraudulent, or cheating going on in those classes. We didn’t know.”

At least one former player doesn’t absolve Davis. A man who identified himself as former North Carolina defensive tackle Tydreke Powell told a Greensboro, N.C. radio station that Davis “came into a meeting one day and he said, ‘If y’all came here for an education, you should have went to Harvard.’”

Davis acknowledges the remark, but insists that Powell misunderstood the point. “I said that, OK, in the context that I made that statement one time, and it was a poorly phrased context, but I said it half comical and half in the form of ‘stop complaining,’ Davis says. “Your days are long. It’s a long, hard day. You’ve got to practice, you’ve got to study, you’ve got to go to class, you’ve got to take notes, you’ve got to do extra work. If you wanted to just get an education period, and you didn’t want to play in a high profile football program, and you didn’t want to chance to go to the NFL, you should have gone to Harvard. It was totally kind of halfway joking and halfway whimsical, comical, and halfway saying ‘hey guys, I hear you. I know being a student-athlete in a Division I major college program in any sport is harder than just being a student.’ If you just wanted to be a student, you should have gone to Harvard, you know?”

The Legal Odds

McAdoo’s suit will keep the glare on North Carolina, but will it hold up in court? “I think it’s an absolutely brilliant strategy,” says Marc Edelman, a sports law expert at Baruch College in New York City. “The thrust of what the NCAA purports to be based on is education in exchange for athletic services. That’s supposed to be the quid pro quo. The implied covenant of good faith and fair dealing is a basic tenant of contract law. There’s a very strong argument that North Carolina violated the quid pro quo.”

But McAdoo isn’t the first college athlete to make this argument, and the existing case law could throw a wrench into his suit. In 1992, the U.S. Court of Appeals for the Seventh Circuit largely upheld a lower court decision to dismiss a case involving Kevin Ross, a former basketball player at Creighton University who sued the school for negligence and breach of contract for failing to educate him. “We agree — indeed we emphasize — that courts should not ‘take on the job of supervising the relationship between colleges and student-athletes or creating in effect a new relationship between them,’” the judges wrote. Courts are reluctant to judge the quality of a student’s education, because “theories of education are not uniform.” How can you objectively measure the quality of a student’s academic experience? It may be a ‘practical impossibility to prove that the alleged malpractice of the teacher proximately caused the learning deficiency of the plaintiff student.’”

“Courts have consistently been very reluctant to get into the quality of education,” says Phillip Closius, a professor at the University of Baltimore School of Law. “This is not binding precedent. But it seems highly unlikely for a court to ignore it.”

The judges were also concerned about the potential “flood of litigation against the schools.” If McAdoo wins damages because his education is deemed insufficient, what’s to stop other dissatisfied students from bringing their own claims?

But the appellate ruling in Ross’s case did leave a small opening for McAdoo’s suit. In order to avoid the murky matter of judging the quality of Ross’ education, the lower court was ordered to answer a very

narrow question. “To adjudicate such a claim, the court would not be required to determine whether Creighton had breached its contract with Mr. Ross by providing *deficient* academic services. Rather, its inquiry would be limited to whether the University had provided any real access to its academic curriculum at all.”

Under this precedent, McAdoo would have to show that North Carolina offered him *no* education. That’s tough to prove. (Ross, who left Creighton with seventh grade reading skills, reached a \$30,000 settlement with the school, which admitted no liability). And it begs the question of why McAdoo didn’t fight harder to enroll in a major of his choosing. “He’s not a minor,” says Closius. “If you know classes have no content, why don’t you do something about it?”

Duru, McAdoo’s lawyer, argues that for young athletes who’ve trained their whole lives to play college football, taking such a stand isn’t so easy. “Think about the expanse of the academic impropriety, and channeling into these courses, going on at North Carolina,” he says. “It was almost part and parcel of being part of the football team. It was just systematic and normative that an 18-year-old kid drop into it.”

McAdoo declared for the NFL’s supplemental draft after he was ruled ineligible and spent two seasons with the Baltimore Ravens on injured reserve. His suit isn’t just seeking money. He wants the court to appoint someone to review the curriculum and course selection for all North Carolina football players for the next five years, and for the school to guarantee athletic scholarships for four years.

“He’s not trying to vilify North Carolina,” says Duru. “He’s trying to right a wrong.”