



## Member obligations for participation in the NCAA concussion injury class action settlement release

April 14, 2020

In 2011, a former Eastern Illinois University football player named Adrian Arrington filed a putative class-action lawsuit against the NCAA for its handling of student-athlete concussions and concussion-related risks. In the complaint, Arrington alleged that he suffers memory loss, depression and migraines as a result of repeated concussions during his years playing safety on the football field. Similar class action cases filed around the country were eventually consolidated with the Arrington case for pretrial proceedings in the United States District Court for the Northern District of Illinois in Chicago. Counsel for the parties worked for years to reach a settlement agreement and provide the requirement notifications to settlement class members. On August 13, 2019, the court gave its approval to the settlement terms negotiated by the parties and declared that the effective date of the settlement agreement was November 18, 2019.

What does the settlement agreement mean for NCAA member schools? The answer will depend on whether member schools choose to comply with the “Member Obligations” outlined in Section IX of the settlement agreement. NCAA member schools that choose to comply with the Member Obligations related to preseason baseline testing, same-day concussion management, return-to-play clearance, the presence of medical personnel at contact sports competitions and the availability of medical personnel at contact sports practices, may benefit from release provisions found in Sections II.QQ and II.RR of the settlement agreement. Under these release provisions, class members will be barred from bringing certain types of legal claims against the institution.

It is important to note that the settlement agreement does not release member schools from all liability related to concussions,

including personal injury claims. This means that student-athletes who have a current, specific concussion-related injury can still bring claims against both the NCAA and its member schools. The benefit of the release provisions lies in the claims in which a defined injury has not been identified but a class member might pursue legal action to cover the costs associated with monitoring concussion-related injuries in the future. This type of legal action, referred to as a “Medical Monitoring” claim, seeks costs associated with additional medical screening that an individual expects to need as a result of exposure to a particular risk.

In exchange for the release of medical monitoring claims against both the NCAA and its member schools, the NCAA has agreed to provide \$70 million for medical monitoring of student-athletes who played an NCAA sport at an NCAA member institution prior to July 15, 2016. In order for student-athletes to take advantage of this monitoring, they must complete a screening questionnaire prepared by a court-appointed committee of medical experts. The answers to this questionnaire determine whether the individual qualifies for further medical testing. According to the settlement agreement, the medical monitoring program begins on February 18, 2020, and the screening questionnaire will be available for completion online after the medical monitoring program begins. (The website, [www.collegeathleteconcussionsettlement.com](http://www.collegeathleteconcussionsettlement.com), will eventually include a link to the questionnaire, but it was not available as of April 14, 2020.)

In order to receive the benefit of the release provision in the settlement agreement, NCAA member schools must comply with the member obligations in Section IX of the settlement agreement and must certify their compliance by May 18, 2020. As previously noted, these obligations cover a range of concussion-related policies and procedures, but they should not be confused with the NCAA Concussion Safety Protocol Checklist requirements. In other words, if your NCAA member school is compliant with the NCAA checklist, do not assume that it is also compliant with the member obligations in the settlement agreement. While there is some overlap in the concussion protocols, they are not an exact match, and NCAA member schools should consult with school legal counsel and other risk management staff to evaluate whether additional steps are necessary to comply with the member obligations. For some member schools, the additional steps necessary for compliance with the member obligations may outweigh the benefit of the release provisions in the settlement agreement.

If your institution wants to take advantage of the release and has confirmed that it is compliant with the member obligations in the settlement agreement, the institution must submit a Certification of Compliance by May 18, 2020. On March 20, 2020, NCAA member schools received an email from the NCAA titled, “Guidance to the NCAA membership about the Arrington Certification Process.” This email included links to a sample Certification of Compliance document, step-by-step instructions for submitting the certification online through a third party settlement administrator called EPIQ and a Frequently Asked Questions (FAQ) document that is specific to the online certification process. The FAQ document affirms that the May 18, 2020, deadline is still in place and encourages all schools to complete the certification process well before that deadline in order to avoid any last-minute submission questions or issues. The email message itself specifically states:

Please note that, while all three divisions continue to explore the possibility of delaying certain other membership reporting obligations in response to the impact of COVID-19, the May 18 certification deadline is imposed by the terms of the Settlement Agreement which is a legal document. The Settlement Agreement does not provide for any opportunity for an extension or waiver of that deadline and the deadline should be considered permanent and immovable.

Although not specifically tied to the certification of compliance or the release provisions, participating NCAA member schools will also be required to participate in concussion reporting under Section IX.C of the settlement agreement and concussion education under Sections IX.E and F of the settlement agreement. The concussion reporting mechanism and educational materials will be provided by the NCAA under the terms of the settlement agreement, while member institutions are responsible for reporting diagnosed student-athlete concussions and disseminating the educational materials on an ongoing basis.

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