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The NCAA's Initial Eligibility Requirements and the Americans with Disabilities Act in the Post-PGA Tour, Inc. v. Martin Era: An Argument in Favor of Deference to the NCAA

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THE NCAA'S INITIAL ELIGIBILITY REQUIREMENTS AND THE AMERICANS WITH DISABILITIES ACT IN THE POST-PGA TOUR, INC. V. MARTIN ERA: AN ARGUMENT IN FAVOR OF DEFERENCE TO THE NCAA

Abstract: In 1990, Congress enacted the Americans with Disabilities Act (the “ADA”) to eradicate discrimination against individuals with disabilities. In 2001, in PGA Tour, Inc. v. Martin, the U.S. Supreme Court interpreted the ADA to prohibit a professional golf association from denying a golfer with a disability the use of a golf cart during competitions, despite a rule requiring all competitors to walk the course. The Martin decision has sparked questions regarding the application of the ADA, including its application to the initial academic eligibility requirements of the National Collegiate Athletic Association (the “NCAA”). This Note examines the impact of the Martin decision on future ADA claims challenging the validity of the NCAA's initial eligibility requirements. Specifically, after examining pre-Martin ADA claims against both the NCAA and academic institutions and comparing two courts' interpretations of Martin, this Note argues that in future cases challenging the NCAA's initial eligibility requirements, courts should interpret Martin to provide the NCAA as much deference as courts continuously have granted to academic institutions.

INTRODUCTION

For many Americans, college athletics conjure images of school pride, “March Madness” tournament pools, and New Year’s Day bowl games.1 Despite these positive images, however, college athletics often are marred by controversy, at the center of which is frequently the National Collegiate Athletic Association (the “NCAA”), the independent

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authority that regulates intercollegiate athletics. In fact, the NCAA continuously has faced criticism regarding the academic standards for student-athletes. On the one hand, some critics have argued that colleges and universities take advantage of student-athletes, exploiting them for entertainment without concern for their educations. On the other hand, some have charged that the NCAA's academic standards discriminate against certain student-athletes with learning disabilities. As a result, the criticism continues, the NCAA bars some student-athletes from attending the college of their choice and, consequently, may preclude them from earning a college degree or participating in intercollegiate sports.

Although much litigation has arisen from this debate, the question of the role of academics in college athletics remains unclear, especially in light of a recent U.S. Supreme Court opinion applying the Americans with Disabilities Act (the "ADA") to a sport—golf. In 2001, in PGA Tour, Inc. v. Martin, the Supreme Court ruled in favor of a professional golfer with a disability, holding that the ADA required the Professional Golf Association (the "PGA") to allow the plaintiff to use a golf cart in its tournaments, despite a rule requiring all golfers to walk. That decision sparked controversy regarding the extent to which courts should involve themselves in the realm of professional sports. More importantly, however, Martin marks one of the most comprehensive treatments of Title III of the ADA.

Although Martin is a landmark case, it raises significant questions about the role of academics in college athletics.

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3 See Weston, supra note 2, at 1068-69.

4 Id.

5 Id. at 1123.

6 See id. at 1122-23.


8 532 U.S. at 690.


10 See 532 U.S. at 664-65, 674, 680, 690.
mark case in ADA jurisprudence, the extent to which *Martin* will affect future ADA litigation remains unclear. Most nebulous, perhaps, is the effect that *Martin* will have on the NCAA—particularly the impact of *Martin* on future ADA cases in which student-athletes with learning disabilities challenge the NCAA’s academic requirements.

Even prior to the *Martin* decision, a number of student-athletes with learning disabilities challenged the NCAA in actions involving Title III of the ADA. In those cases, the student-athletes alleged that some of the NCAA’s academic standards discriminated against them in violation of Title III by denying them full athletic eligibility. Although the courts deciding those cases differed in parts of their analyses, most of the courts agreed that the ADA did not require the NCAA to modify its initial eligibility requirements. Since the Supreme Court announced its decision in *Martin*, however, no court has reached the issue of the application of *Martin* to claims involving ADA challenges to the NCAA’s initial eligibility requirements, and thus the extent to which *Martin* will affect such cases remains unclear.

This Note argues that in future litigation involving the NCAA’s initial academic eligibility requirements, courts should follow the Title III analysis that the Supreme Court set out in *Martin*. In doing so, however, courts should provide the same deference to the NCAA’s professional judgment as to whether a requested modification would fundamentally alter the nature of its privileges and services as they provide to other academic institutions. Courts should provide such deference because, unlike the walking rule at issue in *Martin*, the initial eligibility requirements are academic, and not athletic, in nature. Therefore, courts should defer to the NCAA’s judgment as to

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11 See id.
12 See id.
14 E.g., Cole, 120 F. Supp. 2d at 1066; Tatum, 992 F. Supp. at 1116; Ganden, 1996 WL 680000, at *1, *5.
16 See supra notes 7–15 and accompanying text. A Westlaw search conducted on March 7, 2005, revealed no case law on Title III claims pertaining to the NCAA’s initial eligibility requirements.
17 See 532 U.S. at 688–89.
19 Compare *Martin*, 532 U.S. at 690 (discussing the relevance of the walking rule to the game of golf), with Doe, 2003 WL 22097782, at *8 (discussing academic requirements).
whether a requested modification would lower its academic standards in the same way that courts repeatedly have deferred to the judgments of other academic institutions in similar cases.\textsuperscript{20}

Part I of this Note provides background on the ADA.\textsuperscript{21} It first discusses the statute itself and then outlines the Supreme Court’s interpretation of the ADA in \textit{Martin}.\textsuperscript{22} Part II of this Note discusses the NCAA.\textsuperscript{23} In addition to explaining the NCAA’s goals as the regulatory body in charge of intercollegiate athletics, Part II explains the NCAA’s initial eligibility requirements for incoming student-athletes.\textsuperscript{24} Part II also describes Title III claims involving the NCAA’s initial eligibility requirements that courts resolved before the Supreme Court announced the \textit{Martin} decision.\textsuperscript{25} Part III compares two courts’ interpretations of the \textit{Martin} decision.\textsuperscript{26} One case discussed in Part III involves a Title III claim filed against the NCAA resulting from one of its academic requirements.\textsuperscript{27} The other case, which involves a Title III claim filed against a private school, illustrates an application of \textit{Martin} that called for some deference toward the school’s professional judgment.\textsuperscript{28} Part IV outlines additional cases in which courts have deferred to the professional judgment of academic institutions.\textsuperscript{29} Part V provides an analysis of the application of \textit{Martin} to future Title III claims involving the NCAA’s initial eligibility requirements.\textsuperscript{30} It concludes that Title III applies to the NCAA and suggests that in future cases, courts should provide the same deference to the NCAA that they afford to other academic institutions when applying the \textit{Martin} standard to Title III claims.\textsuperscript{31}

Aimed at eliminating discrimination against individuals with disabilities, the ADA has exerted its influence in many areas of American society, including athletics.32 In fact, athletes with disabilities at all levels, from interscholastic to professional, have used the ADA to request waivers of athletic rules that would otherwise prevent them from participating in sports.33 The results of those cases have been mixed, depending mostly on the circumstances of the plaintiffs, the athletic programs, and the nature of the requested waivers.34 One fact seems clear, however—athletic governing bodies can no longer unreasonably discriminate against athletes with disabilities.35

A. Summary of the ADA

In 1990, Congress enacted the ADA to protect individuals with disabilities from discrimination.36 Having found that individuals with disabilities continually had faced unnecessary discrimination, Congress stated that a purpose of the ADA is “to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.”37 To that end, Congress granted individuals with disabilities a private right of action against specified public and private entities that unfairly discriminate against them.38 Additionally, Congress broadly defined “disability” for the purposes of the ADA as having, having “a record” of having, or “being regarded as

35 See Martin, 532 U.S. at 688–91.
37 Id. § 12101(a)–(b)(1).
38 Id. § 12188 (providing remedies available under 42 U.S.C. § 2000a-3(a)).
having" "a physical or mental impairment that substantially limits one or more of the major life activities of [an] individual." 39

In addition to defining key terms and stating the statute’s purpose, Title I of the ADA prohibits employers from discriminating against qualified employees with disabilities on the basis of their disabilities. 40 Similarly, Title II of the ADA prevents public entities—state and local governments and their agencies—from denying a qualified individual with a disability that entity’s privileges or benefits or otherwise discriminating against that individual because of disability. 41 Titles IV and V of the ADA pertain to telecommunications services and address other miscellaneous provisions.42

Title III of the ADA is the section under which most plaintiffs bring claims against athletic governing bodies.43 Title III prohibits places of public accommodation from discriminating against or providing unequal benefits to individuals with disabilities, including using eligibility requirements that “screen out or tend to screen out” individuals with disabilities.44 Specifically, Title III states that “[n]o individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.”45 Although private clubs and religious organizations are exempt from coverage under Title III, the ADA's definition of places of public accommodation includes private entities serving as places of public gathering and public recreation, such as parks, schools, and gymnasium.46

Title III also requires places of public accommodation to make reasonable modifications to policies or procedures necessary for an

39 Id. § 12102(2).
40 Id. § 12112. A “qualified individual with a disability” is one “who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires.” Id. § 12111(8).
41 42 U.S.C. §§ 12131–12132. The U.S. Court of Appeals for the Sixth Circuit found Title II unconstitutional in particular circumstances but that decision is not relevant to this Note. See Popovich v. Cuyahoga County Court of Common Pleas, 276 F.3d 808, 810–11 (6th Cir.), cert. denied, 537 U.S. 812 (2002).
44 42 U.S.C. § 12182(a)–(b) (2) (A).
45 Id. § 12182(a).
46 Id. § 12181.
individual with a disability to access the entity’s goods or services, unless the entity can show that such an accommodation “would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations.” Put differently, the plaintiff bears the burden of proving (1) that a requested modification would be necessary for the individual with a disability to access the place of public accommodation’s goods or services and (2) that the requested modification would be reasonable under the circumstances. After the plaintiff has provided prima facie evidence as to those two issues, the entity may assert the affirmative defense that the requested modification would not be reasonable, and therefore not required by Title III, because it would fundamentally alter the nature of its goods or services.

B. The ADA as Applied to Professional Golf: PGA Tour, Inc. v. Martin

In 2001, in PGA Tour, Inc. v. Martin, the U.S. Supreme Court applied the ADA to professional athletics and ruled that the ADA protected a qualified golfer with a disability’s access to professional golf tournaments and that his use of a golf cart would not fundamentally alter the nature of the tournaments despite a rule requiring all golfers to walk the course. At the heart of the case was Casey Martin, a talented golfer suffering from a degenerative circulatory disorder that caused atrophy in his right leg, extreme pain, and a risk of additional injury when he walked. Therefore, because Martin’s disability “substantially limit[ed]” walking, a “major life activit[y],” he qualified as an individual with a disability protected by the ADA. Despite his disability, Martin had an accomplished golf career, winning amateur and collegiate tournaments and earning admission into the PGA’s professional golf tournaments.

The PGA, defendant in the suit, is a nonprofit organization that sponsors professional golf tournaments conducted on annual tours. The PGA holds its tournaments at golf courses that it leases and operates for the duration of the specific events. The “hard card,” the golf course's official conditional tee certificate, temporarily authorizes membership to those who have not completed the necessary on-course instruction. Despite the PGA's long-standing rule prohibiting the use of golf carts during tournaments, Martin, who had an accomplished golf career, earned admission into the PGA's professional golf tournaments. In 2001, the U.S. Supreme Court applied the ADA to professional athletics and ruled that the ADA protected a qualified golfer's access to professional golf tournaments. The court held that Martin's use of a golf cart would not fundamentally alter the nature of the tournaments despite a rule requiring all golfers to walk the course. At the heart of the case was Casey Martin, a talented golfer suffering from a degenerative circulatory disorder that caused atrophy in his right leg, extreme pain, and a risk of additional injury when he walked. Therefore, because Martin's disability “substantially limit[ed]” walking, a “major life activit[y],” he qualified as an individual with a disability protected by the ADA. Despite his disability, Martin had an accomplished golf career, winning amateur and collegiate tournaments and earning admission into the PGA's professional golf tournaments.

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rules that govern PGA tours, requires golfers to walk the courses during most tournaments. Although Martin requested that the PGA waive that rule for him, the PGA refused, and thus Martin filed suit under Title III of the ADA, seeking a waiver of the PGA's walking rule.

In response to Martin's complaint, the district court granted him a preliminary injunction that allowed him to use a golf cart for certain competitions. The U.S. Court of Appeals for the Ninth Circuit affirmed, finding that the golf courses were places of public accommodation and that providing Martin with the use of a cart would not fundamentally alter the nature of the tours, but rather would simply provide him access to a competition that his disability would otherwise have prevented him from entering.

Following the Ninth Circuit's decision, the Supreme Court granted certiorari in part to resolve a circuit split involving the application of Title III to professional golf. Specifically, just one day after the Ninth Circuit ruled in Martin's favor in 2000, in Olinger v. United States Golf Ass'n, the U.S. Court of Appeals for the Seventh Circuit denied a golfer with a disability's request for a waiver of a professional golf association's walking rule. In Olinger, the court assumed, without deciding, that Title III applied to the U.S. Golf Association but denied the plaintiff's modification request because it would fundamentally alter the nature of the competition by removing stamina as a quality to be tested in the tournament.

The Supreme Court resolved the split first by holding that Title III applied to the PGA. The Court noted that the PGA's tours occurred on golf courses—places of public accommodation specifically mentioned in Title III—and that the PGA leased and operated the golf courses during its competitions. Therefore, the Court held that Title III prohibited the PGA as an operator of places of public ac-

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56 Id. at 666-67. Golfers are permitted to use golf carts during qualifying rounds and on the Senior PGA Tour, which is limited to players fifty years old or older, though most of the competitors prefer to walk. Id. at 667.
57 Id. at 669.
58 Id. at 672.
59 Id. at 672-73.
60 Martin, 532 U.S. at 674.
61 Olinger v. United States Golf Ass’n, 205 F.3d 1001, 1007 (7th Cir. 2000); see Martin, 532 U.S. at 674.
62 205 F.3d at 1005-07.
63 Martin, 532 U.S. at 676-77.
64 Id.
accommodation from discriminating against an individual with a disability in the full enjoyment of its facilities and privileges.\textsuperscript{65}

Having found that Title III applied to the PGA, the Court next ruled that the PGA discriminated against Martin in a manner prohibited by Title III by not providing him with a reasonable and necessary modification—that is, by disallowing him to ride in a golf cart.\textsuperscript{66} The Court explained that Title III requires an individual inquiry into the circumstances of the case to determine whether the requested modification would be necessary and reasonable under the circumstances without constituting a fundamental alteration.\textsuperscript{67} The PGA did not contest that Martin's use of a golf cart would constitute a reasonable modification necessary for him to participate in its tournaments.\textsuperscript{68} Rather, the PGA raised the affirmative defense that Title III did not require the requested modification to the walking rule because it would fundamentally alter the nature of the competition.\textsuperscript{69}

To analyze the PGA's fundamental alteration defense, the Court announced a two-pronged test.\textsuperscript{70} The Court reasoned that the requested modification could constitute a fundamental alteration in two ways.\textsuperscript{71} First, the modification could alter an aspect of the game so essential that even if the modification applied to all participants, the result would be unacceptable.\textsuperscript{72} Second, a modification to a rule, even one peripheral to the game, could fundamentally alter a competition by providing to the golfer with a disability a competitive advantage

\textsuperscript{65} Id. Responding to the PGA's argument that Title III did not apply to its tours because professional golfers were not members of the class of clients and customers that Title III protects, but rather more closely resembled the class of employees that Title I protects, the Court held that Title III applied to the PGA because it offered at least two "privileges" to the public—playing in and watching its competitions. Id. at 679–80. The Court thus reasoned that competitors in the PGA's tournaments were as much "clients or customers" of the PGA as spectators and thus protected by Title III because members of the public may enter the tournaments through open qualifying rounds and a qualifying tournament, admission to which required only letters of recommendation and a fee. See id.

\textsuperscript{66} Id. at 682–91.

\textsuperscript{67} Id.

\textsuperscript{68} Martin, 532 U.S. at 682.

\textsuperscript{69} Id.

\textsuperscript{70} Id. at 682–83. If Martin's affliction simply made walking difficult or painful, using a golf cart would be a reasonable, but possibly unnecessary, accommodation. See id. at 682. Although the parties resolved that question by not contesting the reasonableness or necessity of the golf cart, that illustration shows that courts must conduct a factual inquiry into the nature of the disability, and presumably, the nature of the requested modification. See id.

\textsuperscript{71} Id.

\textsuperscript{72} Id.
over the other competitors. Applying the facts of the Martin case to that test, the Court concluded that Martin’s use of a cart would not fundamentally alter PGA tournaments in either of those ways, and thus would not be an unreasonable modification.

To reach that conclusion, the Court first held that the walking rule was peripheral to the rules of golf, explaining that walking was not such a fundamental aspect of golf that allowing Martin to ride in a cart would be unacceptable. The Court reviewed various rules of golf—both modern and historic—and ultimately found that walking was not an indispensable feature of golf. Specifically, the Court noted that the historic rules of golf did not mention a walking requirement, even after the advent of golf carts, and that the PGA’s own rules permitted competitors in the PGA Senior Tour to ride in carts during PGA-sponsored competitions.

Second, the Court rejected the PGA’s argument that because its tournaments represented the highest level of competitive golf in which most competitors were essentially of equal skill level, any advantage that one player received would provide that player with a competitive advantage. Rather, the Court responded that guaranteeing equal conditions for all competitors would be impossible and that walking the course produced such a low level of fatigue that it had little impact on those conditions. Most importantly, the Court stressed the specific facts related to Martin’s situation. Because of his disability, the Court reasoned, even with the cart, Martin endured more fatigue as a result of his disorder than the able-bodied competitors did walking. Therefore, permitting Martin to ride in a cart would not provide him with a competitive advantage. Rather, the Court held that that modification simply would remove the barrier to his competing in the PGA that his disability had created, precisely the outcome that the ADA envisioned. Having found, therefore, that

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73 Martin, 532 U.S. at 682–83. This Note refers to these two alternative ways of finding a fundamental alteration as a single two-prong test, the "two-pronged fundamental alteration test." See id.
74 Id. at 683.
75 Id. at 683, 689.
76 Id. at 683–86, 689.
77 Id. at 683–86.
79 Id. at 687.
80 See id. at 688–90.
81 Id. at 690.
82 See id.
83 Martin, 532 U.S. at 688–90.
Martin's use of a golf cart would not fundamentally alter the game of golf, the Supreme Court concluded that the ADA required the PGA to allow Martin to use a golf cart in its competitions.84

II. THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, ITS ACADEMIC REQUIREMENTS, AND LITIGATION ARISING FROM THE REQUIREMENTS

The NCAA is the most prominent sports governing body that promulgates both athletic and academic requirements for student-athletes.85 It has been subject to much ADA litigation in the past, and it likely will face additional Title III claims in light of the Supreme Court's decision in PGA Tour, Inc. v. Martin.86

A. Background on the NCAA

The NCAA is a voluntary association composed of approximately 1200 colleges and universities divided among three divisions for the purpose of administering intercollegiate athletics.87 The NCAA's main duties include establishing and enforcing rules that govern intercollegiate athletics and overseeing programs aimed at serving its purposes and goals.88 The primary goal of the NCAA is to "maintain intercollegiate athletics as an integral part of the educational program and the athlete as an integral part of the student body."89 To that end, the NCAA strives to balance encouraging intercollegiate athletic competition and ensuring that student-athletes receive high-quality college educations.90 Thus, the NCAA requires that student-athletes

84 Id. at 674, 691.
88 Nat'l Collegiate Athletic Ass'n, supra note 85.
89 Id.
90 Id.
both maintain amateur status and remain in good academic standing at the member schools in which they are enrolled.\textsuperscript{91}

The NCAA additionally requires that incoming student-athletes meet specific academic requirements to be eligible to participate in NCAA-sponsored sports.\textsuperscript{92} Originally, the NCAA prohibited its member institutions from providing athletic scholarships to those student-athletes that the schools predicted—based on high school grade point average (the “GPA”) or standardized test scores—would not achieve a minimum 1.6 GPA during their freshman years in college.\textsuperscript{93} After several highly publicized cases of member-institution abuse of that standard, however, the NCAA implemented Proposition 48.\textsuperscript{94} Proposition 48 stiffened the eligibility requirements to include a minimum high school GPA in core courses in conjunction with minimum standardized test scores.\textsuperscript{95} Although the NCAA subsequently has amended the specific requirements, since implementing Proposition 48, the NCAA has continued to employ initial eligibility requirements consisting of a minimum high school GPA, a minimum number of core courses, and a minimum standardized test score.\textsuperscript{96}

1. Initial Eligibility Requirements

The initial eligibility requirements aid the NCAA in determining whether an incoming student-athlete will be able to succeed academically in college while handling the demands of participating in college athletics.\textsuperscript{97} The NCAA Initial Eligibility Clearinghouse (“Clearinghouse”), with the approval of the Executive Committee, certifies whether student-athletes have met their initial eligibility requirements.\textsuperscript{98} The initial eligibility requirements include high school

\textsuperscript{91} Nat’l Collegiate Athletic Ass’n, 2003–2004 NCAA Division I Manual 125 (2003), available at http://www.ncaa.org/library/membership/division_i_manual/2003-04/2003-04_div_I_manual.pdf. While participating in a member school’s athletic program, a student-athlete must be enrolled in a full-time program aimed at attaining a baccalaureate degree and must be in good academic standing while taking at least twelve semester or quarter hours of study to be eligible to compete in NCAA events. Id. at 130.

\textsuperscript{92} Thomas A. Baker, III & Daniel P. Connaughton, Cureton v. NCAA: A Blow-by-Blow Account of the Landmark Title VI Challenges to the NCAA and Their Recent Implications, 13 J. Legal Aspects Sport 145, 147-48 (2003).

\textsuperscript{93} Id. at 148.

\textsuperscript{94} Id.

\textsuperscript{95} Id.

\textsuperscript{96} Nat’l Collegiate Athletic Ass’n, supra note 91, at 127; Baker & Connaughton, supra note 92, at 148–50.


\textsuperscript{98} Nat’l Collegiate Athletic Ass’n, supra note 91, at 138.
graduation, a minimum GPA in thirteen core courses, and a minimum standardized test score on either the American College Testing Assessment (the "ACT") or the Scholastic Aptitude Test (the "SAT"). The core courses cover various subjects and must be taught at or above a school's regular academic level. Remedial and special education classes thus do not qualify as core courses, though the NCAA may exempt student-athletes with learning disabilities from this requirement. The Initial Eligibility Index, a sliding scale that pairs standardized test scores with GPAs, establishes the minimum GPA and test scores. The higher the GPA in core courses, the lower the minimum standardized test requirement and vice versa.

Depending on an incoming student-athlete's level of completion of the initial eligibility requirements, the NCAA grants the following three statuses: qualifier, partial-qualifier, and non-qualifier. The highest status of eligibility is that of qualifier. Student-athletes who meet the requirements of qualifier status are eligible for athletic-based financial aid and may practice and compete during their first year in college. A partial-qualifier may receive athletic-based financial aid and may practice with the college team, but may not participate in NCAA competitions during their first year. Non-qualifiers are not eligible to receive athletic financial aid and may not practice or compete during their first year. Furthermore, neither non-qualifiers nor partial-qualifiers may participate in more than three seasons of any sport, unless by the beginning of their fifth year (fourth season), they have received baccalaureate degrees, or for stu-

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99 Id. at 138-39. The current initial eligibility requirements apply to student-athletes who will first enter college on or before August 1, 2005. Id. at 138. The NCAA also has published its revised initial eligibility criteria that will apply to student-athletes entering college after that date. Id. at 139-44. The NCAA provides details on what qualify as core courses, including specific subject areas and academic standards for the school and the specific course. Id. at 144.

100 Id. at 144.

101 Id.

102 Id. at 139-44.

103 Nat’l Collegiate Athletic Ass’n, supra note 91, at 139-44. For example, for students with a GPA of 2.5 and above, the minimum SAT score is 820, but for students with a minimum GPA of 2.0, the minimum SAT score is 1010. Id.

104 Id. at 142-48.

105 See id. at 138-48.

106 Id.

107 Id. at 147-48.

108 Nat’l Collegiate Athletic Ass’n, supra note 91, at 148.
dent-athletes with learning disabilities, they have completed eighty percent of the work required for their designated degree programs.\textsuperscript{109}

2. Modifications of the Initial Eligibility Requirements for Student-Athletes with Disabilities

Although all student-athletes must meet the same initial eligibility requirements, the NCAA may provide some accommodations to student-athletes with learning disabilities.\textsuperscript{110} To be eligible for such accommodations, student-athletes must present some proof of the disability.\textsuperscript{111} Students who have done so may then use courses for students with disabilities that the Clearinghouse has designated as core courses, use approved core courses that the student-athlete has completed before enrolling in college (including courses the student takes the summer after high school graduation), and use SAT and ACT test scores earned during a nonstandard administration to satisfy the initial eligibility requirements.\textsuperscript{112}

The NCAA’s Academics/Eligibility/Compliance Cabinet determines whether the courses a student-athlete with a learning disability takes qualify as core courses on the basis of confirmation forms issued to the student-athlete’s high school.\textsuperscript{113} Specifically, courses that appear to be taught below the regular academic level may count as core courses for students with disabilities if the student-athlete’s high school principal submits a letter stating that the courses in question are substantially similar to Clearinghouse-approved core courses, both “qualitatively and quantitatively.”\textsuperscript{114}

If, despite those accommodations, the student-athlete does not meet qualifier status, the NCAA may grant an initial eligibility requirement waiver.\textsuperscript{115} The NCAA Subcommittee on Initial Eligibility Waivers considers waiver requests and may grant a waiver based on a student-athlete’s overall academic record.\textsuperscript{116} To make that determination, the NCAA may consider such factors as the extent to which the

\textsuperscript{109} Id.


\textsuperscript{111} Id.

\textsuperscript{112} Id.

\textsuperscript{113} Nat’l Collegiate Athletic Ass’n, supra note 91, at 145.

\textsuperscript{114} Id.

\textsuperscript{115} See id. at 147.

\textsuperscript{116} Id.
student's disability contributed to the failure to meet the eligibility requirements, the student's individualized education plan, the student's overall academic record and standardized test performance, accommodations for the disability that were available and used by the student, and any other factor to help assess the student's preparedness to succeed in college. Based on that review, the Subcommittee may provide an initial eligibility requirement waiver granting the student-athlete partial-qualifier or qualifier status.

3. Consent Decree Involving the Initial Eligibility Requirements and the Foundation of the NCAA's Policy Modifications for Student-Athletes with Learning Disabilities

The NCAA's initial eligibility requirement modifications for student-athletes with learning disabilities stem in part from a consent decree with the U.S. Department of Justice (the "DOJ"). In response to several individuals' complaints that the NCAA's initial eligibility requirements violated Title III, the DOJ investigated the allegations. The NCAA engaged in good faith negotiations with the DOJ to remedy the alleged violations, and in May 1998, without admitting any ADA violations or agreeing that it was subject to Title III, the NCAA entered into a consent decree with the DOJ. Although the consent decree self-terminated in May 2003, the NCAA's current policies regarding initial eligibility requirement modifications for student-athletes with learning disabilities continue to reflect the decree's terms.

During the negotiation process with the DOJ, the NCAA revised some of its policies for student-athletes with learning disabilities. Specifically, the NCAA agreed to accept course work completed after high school graduation—but before college enrollment—to count towards core course credit, and it revised its policy to allow students to initiate the waiver request process themselves.
The consent decree also required the NCAA to implement additional changes. First, the NCAA agreed to propose to its committees changes to its bylaws so that a designation of "special education" or "remedial" in a course title would not automatically disqualify that course from being a core course. Second, the NCAA agreed to propose to its committees that student-athletes with learning disabilities, who are unable to meet the initial eligibility requirements, be able to earn an additional year of athletic eligibility under certain conditions. Third, the NCAA agreed that its committees responsible for hearing initial eligibility requirement waiver requests for Divisions I and II would be composed of experts in the field of learning disabilities. Fourth, the NCAA agreed to employ an ADA liaison, to publish its revised standards, and to report its progress to ensure continued compliance with the ADA.

B. Pre-Martin Title III Cases Involving the NCAA's Initial Eligibility Requirements

In addition to the complaints that led to the consent decree, several student-athletes who did not attain qualifier status sued the NCAA under Title III of the ADA. The plaintiffs alleged that the initial eligibility requirements discriminated against student-athletes with learning disabilities because of their disabilities, and thus they requested injunctions allowing them to participate in intercollegiate athletics. Although the courts in those cases disagreed somewhat on whether and to what extent an initial eligibility requirement waiver would fundamentally alter the nature of the NCAA's privileges and services, they generally agreed that Title III applied to the NCAA and that some modifications to the NCAA would constitute fundamental alterations of its program.

[References]

125 Id.
126 Id.
127 Id.
128 Consent Decree, supra note 119.
129 Id.
131 See, e.g., Cole, 120 F. Supp. 2d at 1067; Ganden, 1996 WL 680000, at *1, 5.
First, the courts that reached the question whether Title III applied to the NCAA suggested that it could.\textsuperscript{133} The courts reasoned that the NCAA operated a place of public accommodation, and thus was subject to Title III because it maintained significant control over its member institutions' athletic facilities.\textsuperscript{134} Specifically, the courts reasoned that the NCAA controlled the facilities not only because the NCAA leased them for tournaments, but also because it regulated the way in which student-athletes could train, controlled ticket and concessions prices and broadcasting rights, and governed which teams could play in each facility.\textsuperscript{135}

Second, most of the courts concluded—or at least assumed without deciding—that the ADA does not and should not require the NCAA to abandon its initial eligibility requirements.\textsuperscript{136} Rather, the courts granted the NCAA some deference, suggesting that the initial eligibility requirements assisted the NCAA in achieving its goal of fostering student athletics.\textsuperscript{137} For example, in 2000, in \textit{Cole v. National Collegiate Athletic Ass'n}, the U.S. District Court for the Northern District of Georgia stated that Title III "does not require an institution to 'lower or to effect substantial modifications of standards to accommodate a handicapped person.'"\textsuperscript{138} Furthermore, the court found that because the initial eligibility requirements were necessary to the

\textsuperscript{136} \textit{Cole}, 120 F. Supp. 2d at 1070 (assuing without deciding that Title III did not require the NCAA to abandon its initial eligibility requirements); \textit{Bowers}, 974 F. Supp. at 466-67 (holding that abandonment of the initial eligibility requirements would constitute a fundamental alteration and that waiver process itself constituted a reasonable modification); \textit{Ganden}, 1996 WL 680000, at *16 (holding that requested waiver would fundamentally alter the nature of the NCAA's programs and services). Other courts did not reach the question of whether the requested modification would constitute a fundamental alteration, but they nonetheless indicated that the modification would have been reasonable. \textit{Tatum}, 992 F. Supp. at 1123 n.5 (stating in a footnote that requiring the NCAA to accept untimed standardized test scores would not fundamentally alter the nature of its programs, though not reaching the question directly because the plaintiff was found not to be disabled); \textit{Butler v. Nat'l Collegiate Athletic Ass'n}, No. C96-1656D, 1996 WL 1058238, at *6 (W.D. Wash. Nov. 8, 1996) (unpublished opinion) (not reaching the question of whether the requested modification would constitute a fundamental alteration, but in conducting preliminary injunction analysis, finding that granting a waiver for the plaintiff would not harm the NCAA).
\textsuperscript{138} 120 F. Supp. 2d at 1070 (quoting Pottgen v. Mo. State High Sch. Activities Ass'n, 40 F.3d 926, 930 (8th Cir. 1994) (quoting Southeastern Cnty. Coll. v. \textit{Tenn.}, 442 U.S. 307, 398-99 (1979)) (internal quotations omitted)).
accomplishment of the NCAA's interest of ensuring that student-athletes were prepared to succeed in their academics and did not simply attend college to play sports, granting a waiver to the plaintiff who did not meet the requirements would not constitute a reasonable accommodation under Title III.\textsuperscript{139} The court also suggested that deference to the NCAA Waiver Subcommittee's decisions would be appropriate and stated that the ADA did not require the NCAA to abandon its academic requirements for any athlete because doing so would not be a reasonable accommodation.\textsuperscript{140}

Similarly, in 1996, the U.S. District Court for the Northern District of Illinois in \textit{Ganden v. National Collegiate Athletic Ass'n}, found that the plaintiff's requested modification of the initial eligibility requirements would constitute a fundamental alteration.\textsuperscript{141} The court began the fundamental alteration analysis by noting that the eligibility requirements served an important interest for the NCAA, namely ensuring that student-athletes were prepared for the academic aspects of college.\textsuperscript{142} For student-athletes with learning disabilities, the initial eligibility requirements not only served that purpose, but they also ensured through the waiver process that the NCAA provided those student-athletes with individualized consideration, as Title III requires.\textsuperscript{143} The court reasoned that removing the core course requirement for the plaintiff would fundamentally alter the nature of the NCAA requirements by requiring the NCAA to accept courses with little substantive similarity to accepted core classes and by denying the NCAA a mode of determining the student-athlete's academic potential.\textsuperscript{144} Similarly, lowering the minimum GPA for the plaintiff would fundamentally alter the NCAA's requirements by removing "the NCAA's primary objective tool to determine a student's academic capabilities."\textsuperscript{145} That, the court held, was not the result that Title III envisioned.\textsuperscript{146} Rather, the court noted that although a situation may exist

\textsuperscript{139} \textit{Id.}.
\textsuperscript{140} \textit{Id.} at 1071–72. Indeed, the court noted that "[a]bandoning the eligibility requirements altogether for this or any athlete is unreasonable as a matter of law and is not required by the ADA." \textit{Id.} at 1071.
\textsuperscript{141} See 1996 WL 680000, at *15.
\textsuperscript{142} \textit{Id.}
\textsuperscript{143} \textit{Id.}
\textsuperscript{144} \textit{Id.}
\textsuperscript{145} \textit{Id.} at *16.
\textsuperscript{146} \textit{Ganden}, 1996 WL 680000, at *16.
that would warrant the NCAA's lowering of its GPA requirement, such a modification generally would be unreasonable.\textsuperscript{147}

Additionally, in 1997, in \textit{Bowers v. National Collegiate Athletic Ass'n}, the U.S. District Court for the District of New Jersey denied a student-athlete with a learning disability a preliminary injunction requiring the NCAA to grant him qualifier status because he failed to demonstrate a likelihood of establishing that the NCAA's initial eligibility requirements discriminated against him in violation of the ADA by screening out student-athletes with learning disabilities.\textsuperscript{148} The court first noted that the NCAA provided accommodations for student-athletes with learning disabilities through the waiver process and by allowing high school principals to demonstrate that special education courses qualitatively and quantitatively provided students with the same knowledge as accepted core courses.\textsuperscript{149} The court then suggested that the plaintiff was attempting to remove the core course requirement instead of simply seeking a modification.\textsuperscript{150} That result would be unreasonable under the ADA, the court reasoned, because the ADA required only that the NCAA modify its requirements, not abandon them altogether.\textsuperscript{151} Furthermore, the court added that the initial eligibility requirements were necessary to accomplish the NCAA's goals of maintaining intercollegiate athletics as an integral part of the collegiate program and ensuring that student-athletes progressed academically.\textsuperscript{152} The court also noted that the core course requirements allowed the NCAA to evaluate whether student-athletes would be able to handle the demands of both college academics and athletics.\textsuperscript{153} Following that reasoning, the court held that a complete abandonment of the core course requirement would fundamentally alter the nature of the NCAA's program and that the NCAA's waiver process constituted a reasonable modification for student-athletes with learning disabilities in satisfaction of the ADA's requirements.\textsuperscript{154}

\textsuperscript{147} \textit{Id.} The court added, however, that not every waiver of the initial eligibility requirements would fundamentally alter the NCAA's purpose, and thus the NCAA was not completely insulated from claims that it violated Title III. \textit{See id. at }\textsuperscript{*15.}

\textsuperscript{148} 974 F. Supp. at 467.

\textsuperscript{149} \textit{Id.}

\textsuperscript{150} \textit{Id. at }466.

\textsuperscript{151} \textit{Id.}

\textsuperscript{152} \textit{Id. at }466-67.

\textsuperscript{153} \textit{Bowers,} 974 F. Supp. at 466-67.

\textsuperscript{154} \textit{Id. at }467.
III. Application of the Martin Standard: Two Differing Approaches

Although the courts that decided Title III cases involving the NCAA's initial eligibility requirements had begun to develop a pattern for analyzing those claims, it is unclear how courts will decide similar cases in light of the U.S. Supreme Court's 2001 decision in PGA Tour, Inc. v. Martin. The confusion stems from the fact that the Supreme Court recited two versions of the correct analysis of Title III claims in the Martin decision. In its analysis in Martin, the Supreme Court examined whether the requested modification was reasonable and necessary, and yet would not fundamentally alter the nature of the PGA's services. The Court then announced the two-pronged fundamental alteration test, which asks whether the modification would alter the nature of the competition to the extent that it would be unacceptable even if provided to all competitors, or whether the modification would provide one competitor with an unfair advantage.

Later in the Martin opinion, however, the Supreme Court restated the analysis for Title III claims. The second version of the analysis requires courts to ask only whether the requested modification is reasonable and necessary and would not constitute a fundamental alteration, but it does not require the two-pronged fundamental alteration test. It is thus unclear whether the Court intended the two-pronged fundamental alteration test to be a required part of Title III analysis in future claims. Furthermore, in applying Martin to subsequent Title III claims, some courts have followed the two-pronged fundamental alteration test, but others have not.

156 See 532 U.S. at 682-83, 688.
157 Id. at 682.
158 Id. at 682-83.
159 Id. at 688.
160 See id.
161 See Martin, 532 U.S. at 682, 688.
A. Matthews v. National Collegiate Athletic Ass’n: One Court’s Attempt at Applying Martin to the NCAA

In 2001, in Matthews v. National Collegiate Athletic Ass’n, the U.S. District Court for the Eastern District of Washington followed the standards the U.S. Supreme Court set out in Martin, including the two-pronged fundamental alteration test. In Matthews, the court granted, in part, the request of a student-athlete with a learning disability for summary judgment involving a waiver to one of the NCAA’s academic requirements. One of the NCAA’s continuing eligibility requirements, the 75/25 rule, required all NCAA student-athletes to complete seventy-five percent of their annual required credit hours during the regular academic year. Per the NCAA bylaws, however, student-athletes with learning disabilities could request waivers to that rule. Although the NCAA previously had granted the plaintiff waivers to the 75/25 rule, the NCAA declined to grant an additional waiver. Rather, the NCAA declared him academically ineligible, claiming that the student-athlete required the waiver not because of his learning disability, but because of his lack of effort.

To analyze the plaintiff’s claim, the court first decided that the NCAA was subject to Title III of the ADA. Discussing several courts’ Title III analyses, the court in Matthews held that Title III applied to the NCAA based on the NCAA’s large degree of control over students’ access to the arena of college athletics. Furthermore, the court indicated that the ADA generally protected the plaintiff in Matthews because he was disabled under the statute’s definition and because the NCAA’s disqualification of him was a result of his disability.

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164 Id. at 1231. The court dismissed the claim with prejudice as moot because the plaintiff was completing his fourth and final year of eligibility during the pendency of the case. Id. at 1213, 1228.
165 Id. at 1215. Put differently, the 75/25 rule prohibits student-athletes from completing more than twenty-five percent of their required annual credit hours during summer semesters. Id. The NCAA implemented the 75/25 rule in 1992 after some member institutions expressed concern that some student-athletes were taking reduced course loads during the school year and excessively using summer school courses to maintain their academic eligibility. Id.
166 Id.
167 Id. at 1216.
168 Matthews, 179 F. Supp. 2d at 1216.
169 Id. at 1223.
170 Id. at 1219–22 (discussing Martin, Cole, Tatum, Bowers, and Ganden); see supra notes 133–135 and accompanying text.
171 Matthews, 179 F. Supp. 2d at 1224.
Having found Title III of the ADA applicable, the Matthews court next conducted a Title III analysis. The court first required the plaintiff to show the existence of a reasonable modification of a rule that would enable the plaintiff to participate in the specified activity. After the plaintiff met that burden, the court continued, the defendant must then show that the requested modification would fundamentally alter the nature of its program or activity. The court next cited Martin for the proposition that in evaluating what would constitute a reasonable modification, courts should focus on the individual circumstances of the case instead of simply determining whether a blanket waiver of the requirement would constitute a fundamental alteration. Specifically, the Matthews court noted that Martin stated that a rule peripheral to the nature of a service or activity could be waived in certain instances without fundamentally altering the nature of that service or activity. Finally, the court cited Martin's two-pronged fundamental alteration test—that a modification of certain rules may constitute a fundamental alteration if it would affect an essential aspect of the program such that it would be unacceptable even if applied to all participants or if the modification would provide an unfair advantage to one participant.

Applying that standard, the court held that a waiver of the 75/25 rule for the plaintiff would not constitute a fundamental alteration of the NCAA's programs. First, the court noted that the NCAA previously had granted the plaintiff two academic waivers, including a waiver of the 75/25 rule. The court highlighted the difference between Matthews and cases involving the initial eligibility requirements in which the NCAA had never granted waivers. Second, the court added that the NCAA adopted the 75/25 rule long after it had established its purpose and had begun regulating college athletics. Third, because the plaintiff had exceeded some of the NCAA's other academic requirements, the court held that a waiver of the 75/25 rule

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172 Id. at 1224–27.
173 Id. at 1225.
174 Id.
175 Id. (citing Martin, 532 U.S. at 682–83).
176 Matthews, 179 F. Supp. 2d at 1225 (citing Martin, 532 U.S. at 682–83).
177 Id. (citing Martin, 532 U.S. at 682–83).
178 Id. at 1226.
179 Id.
180 Id.
181 Matthews, 179 F. Supp. 2d at 1226.
would not have frustrated the NCAA's purpose of fostering academic achievement for student-athletes.\textsuperscript{182}

The court used those findings in applying the \textit{Martin} two-pronged fundamental alteration test.\textsuperscript{183} As for the first prong, the court held that although completely abandoning the NCAA's academic requirements would compromise the NCAA's purpose, a waiver of the 75/25 rule, even if provided to all athletes, would not alter an essential aspect of the NCAA's purpose.\textsuperscript{184} The court based its decision on the facts that the NCAA had numerous other bylaws to ensure student-athletes' academic achievement and that neither football (the plaintiff's sport) nor college courses of study require students to complete seventy-five percent of their coursework during the regular school year.\textsuperscript{185} Addressing the second prong, the court held that providing the plaintiff with a waiver would not result in him gaining any unfair advantage, but rather would simply permit him to participate in intercollegiate athletics.\textsuperscript{186} Therefore, applying the individualized inquiry standard from \textit{Martin}, the Matthews court found that granting the plaintiff a waiver to the 75/25 rule would not fundamentally alter the NCAA's purpose.\textsuperscript{187}

B. Doe v. Haverford School: A Differing Approach to Applying Martin

Although the Matthews court followed the two-pronged fundamental alteration test, another court followed the U.S. Supreme Court's alternate annunciation of the \textit{Martin} standard, and thus did not follow the two-pronged test.\textsuperscript{188} In 2003, the U.S. District Court for the Eastern District of Pennsylvania in \textit{Doe v. Haverford School}, interpreted the Supreme Court's Title III standard from \textit{Martin} in an ADA case involving a private school.\textsuperscript{189} In \textit{Doe}, a high school student with a learning disability at The Haverford School filed for a preliminary injunction requiring Haverford to modify its academic requirements pursuant to the ADA.\textsuperscript{190} Despite repeated waivers of Haverford's aca-

\textsuperscript{182} Id.
\textsuperscript{183} Id. at 1226–27 (citing \textit{Martin}, 532 U.S. at 682–83).
\textsuperscript{184} Id.
\textsuperscript{185} Id.
\textsuperscript{186} Matthews, 179 F. Supp. 2d at 1227.
\textsuperscript{187} Id. at 1226–27 (citing \textit{Martin}, 532 U.S. at 682–83).
\textsuperscript{188} Compare \textit{Doe}, 2003 WL 22097782, *5, *8 (not following the two-pronged fundamental alteration test), with Matthews, 179 F. Supp. 2d at 1225–27 (applying the two-pronged fundamental alteration test).
\textsuperscript{189} Doe, 2003 WL 22097782, at *5–9 (citing \textit{Martin}, 532 U.S. at 688).
\textsuperscript{190} Id. at *1. Title III, and not Title II, applies to this case because Haverford is a private school. See \textit{id}. 
demic requirements, the plaintiff, who suffered from sleep disorders, failed to complete the required coursework to advance to the twelfth grade and thus requested additional modifications.191

To evaluate the Title III claim, the court interpreted the Martin standard to require an individualized inquiry into the circumstances of the case and noted that three requirements must be met before a court should obligate an entity to provide the requested modification.192 First, the modification must be reasonable.193 Second, it must be necessary for the individual with a disability.194 Third, the requested modification must not fundamentally alter the nature of the entity’s services.195 The school did not challenge the necessity of the requested modifications; therefore, the only questions before the court were whether the modifications were reasonable and whether they would not fundamentally alter the nature of the school’s services.196

Regarding reasonableness, the court found that the plaintiff did not demonstrate likely success on the merits.197 The court noted that courts generally deferred to the decisions of academic institutions because those institutions were in the best position to evaluate a request in light of their academic standards.198 Therefore, the court added, as long as a school rationally reached a justifiable conclusion that the modifications would not be reasonable, courts generally should defer to that decision.199 In Doe, the court noted that Haverford already had accommodated the plaintiff with a series of modifications and that any rejections of additional modifications reasonably could be justified to preserve the school’s academic standards.200

Although the court found the requested modifications unreasonable, even if the plaintiff could meet his burden of proving reasonableness, the court added that the requested modifications would

191 Id. at *1-3. The requested modifications included extra time to complete past-due coursework, a requirement that his teachers be available to him during the summer to answer any questions about his unfinished work, and a transcript that would not contain any failing grades for one school year. Id. at *5-6.
192 Id. at *5-6 (citing Martin, 532 U.S. at 688).
193 Id. at *5.
195 Id.
196 Id.
197 Id. at *5-8.
198 Id. at *8.
200 Id. at *7.
fundamentally alter the nature of Haverford’s services, and thus would not be required by Title III.201 Again, the court deferred to the judgment of the school, noting that schools must consider the feasibility, cost, and possibility of alternative means of accommodating the student in reaching their decisions.202 Using that standard, the court validated Haverford’s determination that the requested modifications would fundamentally alter its academic programs.203

Furthermore, the court rejected the plaintiff’s claim that the modifications would not fundamentally alter the nature of Haverford’s services because the school previously had provided similar modifications.204 The court rejected the argument not only because of a change in the plaintiff’s circumstances (namely, that he had an increased amount of outstanding work), but also because the statute did not convert prior modifications into required reasonable modifications in the future.205 That reasoning, the court explained, would provide a disincentive for entities covered by Title III to accommodate individuals with disabilities—even in situations not required by the ADA—for fear of having to continue such modifications indefinitely.206 As a result, the court concluded, the ADA’s purpose of integrating individuals with disabilities into society would be hindered.207

IV. COURTS’ TRADITIONAL DEFERENCE TO THE JUDGMENT OF ACADEMIC INSTITUTIONS

The U.S. District Court for the Eastern District of Pennsylvania, in 2003 in *Doe v. Haverford School*, was not the first court to defer to the professional judgment of an academic institution regarding the reasonableness of a requested modification.208 Rather, numerous other

\[\text{\[IIId. at *8.}\]
\[\text{\[Id.}\]
\[\text{\[Id. at *8-9.}\]
\[\text{\[Doe, 2003 WL 22097782, at *8-9.}\]
\[\text{\[Id.}\]
\[\text{\[See id.}\]
\[\text{\[See id.}\]
courts, including the U.S. Supreme Court, have held that such deference is warranted.\textsuperscript{209}

For example, in 1979, in \textit{Southeastern Community College v. Davis}, the U.S. Supreme Court recognized the need to balance the rights of an individual with a disability with the rights of academic institutions to maintain their academic integrity.\textsuperscript{210} In that case, the defendant school denied the plaintiff, who suffered from a hearing disability, admission into a nursing program because of her disability.\textsuperscript{211} The U.S. Supreme Court found that the defendant's refusal to modify its nursing program for the plaintiff was not unlawfully discriminatory.\textsuperscript{212} Rather, the Court accepted the college's statements that its purpose was to train nursing professionals and that the plaintiff could not participate in the school's program without lowering its standards.\textsuperscript{213} Defering to the school, the Court thus held that there is "no requirement upon an educational institution to lower or to effect substantial modifications of standards to accommodate a handicapped person."\textsuperscript{214}

Similarly, in 1999, in \textit{Zukle v. Regents of the University of California}, the U.S. Court of Appeals for the Ninth Circuit upheld a medical school's decision to dismiss a student with a disability who had not met several requirements.\textsuperscript{215} Noting that academic institutions deserve courts' deference, the \textit{Zukle} court pointed to precedent that noted that courts have a limited ability to evaluate academic standards.\textsuperscript{216} In particular, contrasted to the experience of education experts, courts are ill-equipped to evaluate whether a student potentially could meet the standards of a particular school, and the \textit{Zukle} court, therefore, adopted a standard for reviewing cases questioning the decisions of academic institutions.\textsuperscript{217} The standard recognizes that the courts are final arbiters of those decisions but notes that courts should grant judicial deference to schools so long as schools' academic deci-


\textsuperscript{210} 442 U.S. at 412-14. \textit{Davis} involved a claim arising from § 504 of the Rehabilitation Act. \textit{Id.} at 400; see 29 U.S.C. § 794 (2000 & West Stipp. 2002). Analysis of rights and obligations created by the ADA, however, are almost identical to those set forth in the Rehabilitation Act. \textit{Zukle}, 166 F.3d at 1045 n.11.

\textsuperscript{211} \textit{Davis}, 442 U.S. at 400-02.

\textsuperscript{212} \textit{Id.} at 413.

\textsuperscript{213} \textit{Id.}

\textsuperscript{214} \textit{Id.}

\textsuperscript{215} 166 F.3d at 1043-46, 1047-48. \textit{Zukle} involved a Title II ADA claim because the defendant was a government agency. \textit{Id.} at 1045.

\textsuperscript{216} \textit{Id.} at 1047.

\textsuperscript{217} \textit{Id.} at 1047-48.
sions are sound and not solely implemented for the purpose of denying an education to individuals with disabilities. The court further held that such deference is equally warranted to an academic institution's determination that a reasonable accommodation would not be available.

Additionally, in 1998, the U.S. Court of Appeals for the First Circuit indicated that deference to the professional judgment of an academic institution that attempted to suspend a student with serious behavioral problems was warranted in Bercovitch v. Baldwin School, Inc.In that case, which involved a Title III claim filed against a private school, the court held that the district court had erred in not following the professional judgment of the academic institution as to the reasonableness of the requested modifications. The Bercovitch court noted that the record did not indicate any evidence of intentional discrimination or stereotyping on the part of the school. Thus, the court deferred to the school's decision that the requested modifications involving exemptions to the school's disciplinary code were unreasonable because they would fundamentally alter the nature of its programs. The court further urged future courts examining similar cases to exercise caution in substituting the judgment of the court for that of a school.

V. Analysis of the Application of PGA Tour, Inc. v. Martin to Future Litigation Involving the NCAA's Initial Eligibility Requirements

The cases involving Title III of the ADA and the NCAA's initial eligibility requirements decided before the U.S. Supreme Court's 2001 decision in PGA Tour, Inc. v. Martin and the cases applying varied interpretations of the Martin standard indicate that courts should be careful in applying the Martin standard to the NCAA's initial eligibility requirements. Because a stringent interpretation of Martin may not be

218 Id.
219 Id. at 1048.
220 See 133 F.3d at 153.
221 Id. (citing Wynne v. Tufts Univ. Sch. of Med., 976 F.3d 791, 795 (1st Cir. 1992)).
222 Id.
223 See id. at 152-54.
224 See id. at 153.
required and because such an interpretation would drastically hinder the NCAA's ability to achieve its purpose of integrating college athletics and academics, courts should provide the NCAA the same level of deference in evaluating Title III requests for modifications to the NCAA's initial eligibility requirements that they provide to schools.226

A. Applying Title III of the ADA to the NCAA

The threshold question in determining the extent to which the Martin decision will impact the NCAA's initial eligibility requirements is whether Title III applies to the NCAA.227 Based on prior litigation involving ADA claims against the NCAA, the Martin decision, and the overall purpose of the ADA, the answer appears clear that the NCAA is subject to Title III because the NCAA maintains control over places of public accommodation—athletic facilities.228 Assuming Title III does apply to the NCAA, the more poignant question is how to apply the Martin standard to questions involving the NCAA's initial eligibility requirements.229

B. Differentiating Matthews from Future Initial Eligibility Requirement Cases

In 2001, in Matthews v. National Collegiate Athletic Ass'n, the only case involving an ADA claim against the NCAA's academic requirements decided since the U.S. Supreme Court released the Martin decision, the U.S. District Court for the Eastern District of Washington did not distinguish between athletic and academic rules, but rather directly applied the Martin standard, including the two-pronged fundamental alteration test.230 Using that standard, the court held that a


226 See Martin, 532 U.S. at 682-83, 688; Doe, 2003 WL 22097782, at *4-9; Matthews, 179 F. Supp. 2d at 1218-23; Cole, 120 F. Supp. 2d at 1071-72.

227 See 532 U.S. at 675-76.

228 See, e.g., 42 U.S.C. § 12101(b) (2000) (including private entities in its liberal definition of public accommodation for the purposes of Title III); Martin, 532 U.S. at 675-80 (holding that Title III applied to the PGA because it operated places of public accommodation); Matthews, 179 F. Supp. 2d at 1219-23 (holding that Title III applies to the NCAA because the NCAA exercises control over the facilities); Tatum v. Nat’l Collegiate Athletic Ass’n, 992 F. Supp. 1114, 1121 (E.D. Mo. 1998) (holding that Title III applies to the NCAA because the NCAA maintains control over the facilities).


230 See Matthews, 179 F. Supp. 2d at 1224-27 (citing Martin, 532 U.S. at 682-83).
waiver to a continuing academic eligibility requirement for a qualified
student-athlete with a disability would not constitute a fundamental
alteration of the NCAA's purpose and policies.231

Although the Matthews court applied the Martin standard as the
Supreme Court had articulated it, the Martin standard should not apply
as directly to other NCAA academic rules, namely, its initial eligi-
bility requirements, because the application of the two-pronged fund-
damental alteration test in the academic setting hinders the NCAA's
ability to control its academic goals.232 For example, assume a
qualified student-athlete with a disability brings suit against the NCAA
for failure to grant a waiver of its initial eligibility requirements and
that the NCAA does not dispute that a waiver would be a reasonable
and necessary modification for that student-athlete.233 Following the
Martin two-pronged standard, once the NCAA asserts that the
modification would fundamentally alter its nature, the court next
would need to analyze whether such a modification would alter an
aspect of the NCAA so fundamental that the modification would be
unacceptable even if provided to all student-athletes or would provide
the student-athlete with an unfair advantage.234

Regarding the first inquiry of whether a requested modification
would be unacceptable even if applied to all student-athletes, the
NCAA would always fail because the initial eligibility requirements
would be deemed peripheral.235 Although the NCAA could differen-
tiate the initial eligibility requirements from the peripheral 75/25 rule
because they are the only way to evaluate incoming students (whereas
the 75/25 rule is one of many continuing academic standards), given
the Court's narrow reading of what is essential in Martin and the simi-
larities between the initial eligibility requirements and the 75/25 rule
that the Matthews court previously had found to be nonessential, that
argument most likely would fail for several reasons.236

First, the NCAA regularly has provided student-athletes with ini-
tial eligibility requirement waivers.237 A waiver of initial eligibility re-
quirements would no more constitute a fundamental alteration to the

231 Id.
232 See Martin, 532 U.S. at 682-83, 688; Doe, 2003 WL 22097782, at *4-9; Matthews, 179
F. Supp. 2d at 1218-23; Cole, 120 F. Supp. 2d at 1071-72.
234 See 532 U.S. at 682-83.
235 See infra notes 236-242 and accompanying text.
236 See Martin, 532 U.S. at 689; Matthews, 179 F. Supp. 2d at 1226-27.
237 Jenny Blayden & Cynthia Pemberton, An Investigation of NCAA Initial Eligibility Waiver
NCAA than a waiver of the walking rule for the PGA because, like the rules of golf that do not always require walking, the NCAA does not always require student-athletes to meet the initial eligibility requirements. Second, as the Matthews decision noted, the NCAA had declared its mission to integrate academics and athletics long before it implemented certain aspects of its academic requirements. Again, in the same way that the official rules of golf did not specifically forbid the use of carts, the NCAA rules, at least at their inception, did not require the initial academic eligibility requirements, which themselves have changed several times. Finally, following the Matthews approach, because none of the rules of NCAA-sponsored sports requires any academic standards and because the NCAA member institutions may not necessarily require the same academic standards as the NCAA for admission, a waiver of the initial eligibility requirements would be no more offensive than a general waiver of the 75/25 requirement, which the Matthews court found acceptable. Therefore, because the NCAA cannot differentiate its rules and waivers from those of the PGA and because the Matthews court concluded that a continuing eligibility requirement was not fundamental, the NCAA likely cannot prevail on the first prong of the Martin fundamental alteration test.

Similarly, as for the second inquiry, assuming that the requested core course or test score/GPA modifications were reasonable and necessary, the modification would never provide the student-athlete with an unfair advantage. Rather, like the golf cart for Martin, an initial eligibility requirement waiver would simply mitigate whatever obstacles to meeting qualifier status the student-athlete's learning disability had caused.

Therefore, the result of following the Matthews court's interpretation of the Martin decision as requiring the two-pronged fundamental alteration test for academic questions would be to deprive the NCAA of its affirmative defense to claims of reasonableness. Consequently, the NCAA would need to succeed in showing that a modification

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238 See Martin, 532 U.S. at 686–88; Blayden & Pemberton, supra note 237, at 48.
239 Matthews, 179 F. Supp. 2d at 1226.
240 See Martin, 532 U.S. at 684–85; Baker & Connaughton, supra note 92, at 147–50.
241 See Matthews, 179 F. Supp. 2d at 1226–27.
242 See id.
243 See id.
244 See Martin, 532 U.S. at 690; Matthews, 179 F. Supp. 2d at 1227.
245 See Matthews, 179 F. Supp. 2d at 1226–27.
would be either unreasonable (for a reason other than that the modification would fundamentally alter its nature) or unnecessary for that student.\(^\text{246}\) Alternatively, the NCAA could simply honor every request for an initial eligibility requirement waiver from a student-athlete with a learning disability, regardless of whether the requested modification would be harmful to the NCAA's academic mission.\(^\text{247}\) In that way, following the Martin standard as stringently as the Matthews court would essentially remove the initial eligibility requirements for at least some students (namely those student-athletes with learning disabilities for whom a waiver would be reasonable and necessary), which is the precise outcome that several courts explicitly have denounced.\(^\text{248}\) Furthermore, such a limitation on the NCAA's ability to regulate incoming student-athletes would substantially impair its ability to achieve its goals of ensuring that student-athletes succeed academically, as well as athletically.\(^\text{249}\)

C. Following the Doe Approach Allows the NCAA to Protect Its Mission

Rather than differentiating its initial eligibility requirements from its 75/25 rule, the NCAA should base future arguments on the 2003 U.S. District Court for the Eastern Division's decision, Doe v. Haverford School.\(^\text{250}\) In that case, the court interpreted the Martin standard to require the following three inquiries: (1) whether the modification is reasonable, (2) whether the modification is necessary for the individual, and (3) whether the modification would fundamentally alter the nature of the services provided by the entity.\(^\text{251}\) The Doe court did not divide the requirement that the modification not fundamentally alter the nature of the services into the two-pronged fundamental alteration test that the Martin decision created.\(^\text{252}\)

This interpretation of the Martin decision's standard has merit.\(^\text{253}\) Because the U.S. Supreme Court granted certiorari to reconcile a cir-

\(^{246}\) See id.

\(^{247}\) See id.

\(^{248}\) See id.; see also Cole, 120 F. Supp. 2d at 1071–72 (stating that Title III does not require the NCAA to abandon its initial eligibility requirements); Ganden v. Nat'l Collegiate Athletic Ass'n, No. 96 C 6953, 1996 WL 680000, at *15, *16 (N.D. Ill. Nov. 21, 1996) (unpublished opinion).

\(^{249}\) See Cole, 120 F. Supp. 2d at 1071–72; NAT'L COLLEGIATE ATHLETIC ASS'N, supra note 85.

\(^{250}\) 2003 WL 22097782, at *8–10.

\(^{251}\) Id. at *5.

\(^{252}\) See Doe, 2003 WL 22097782, at *5; see also Martin, 532 U.S. at 682–83 (discussing two-pronged test).

\(^{253}\) See 532 U.S. at 682–83, 688.
cuit split involving the Title III claims of golfers with disabilities against golf associations, it is arguable that the Court intended the two-pronged fundamental alteration test to apply to only professional golf or similar competitions. Specifically, in announcing the two-pronged analysis, the Court used language specific to the PGA, although more neutral language was available—"in theory, a modification of petitioner's golf tournaments might constitute a fundamental alteration in two different ways." In contrast, later in the decision, the Court restated its interpretation of Title III's requirement without any reference to sports or the two-pronged fundamental alteration test:

To comply with this command [that places of public accommodations make reasonable accommodations for individuals with disabilities], an individualized inquiry must be made to determine whether a specific modification for a particular person's disability would be reasonable under the circumstances as well as necessary for that person, and yet at the same time not work a fundamental alteration.

Furthermore, the Court outlined the second version of the standard in a portion of the opinion discussing Title III generally, but it mentioned the two-pronged fundamental alteration standard only in the portion discussing Martin's claim against the PGA specifically.

In Doe, the court did not apply the two-pronged test when considering whether the requested modifications would constitute a fundamental alteration. Rather, the Doe court cited pre-Martin cases involving ADA claims brought against academic institutions. Doe thus illustrates that Martin did not necessarily override all previous Title II precedent, but rather simply confirmed the three-part inquiry that courts had followed in conducting Title III analyses. At the most basic level, therefore, the NCAA should argue in future Title III actions involving its initial eligibility requirements that the stan-

\[254\] See id. at 674.
\[255\] Id. at 682. A more neutral way of introducing the standard would be to simply delete the words "of petitioner's golf tournaments." See id.
\[256\] Id. at 688.
\[257\] Id. at 682-83, 688.
\[258\] 2003 WL 22097782, at *5.
\[259\] Id.
dards used by the courts in the pre-<i>Martin</i> Title III cases involving the initial eligibility requirements continue to be valid. 261

Furthermore, if courts were to follow the <i>Doe</i> interpretation of the <i>Martin</i> standard in future cases involving the NCAA's initial eligibility requirements, the result would be comparable to the outcomes of pre-<i>Martin</i> initial eligibility cases, in which the NCAA succeeded with a defense of fundamental alteration. 262 Without having to adhere to the narrow inquiry of the two-pronged fundamental alteration test, courts would have more leeway in evaluating whether the modification would fundamentally alter the NCAA's academic purpose, and thus courts could ask questions more tailored to that purpose. 263 Thus, courts could continue to provide some deference to the NCAA so that it could continue to maintain its academic standards. 264

Even if courts follow the <i>Doe</i> interpretation of the <i>Martin</i> standard in future Title III claims involving the NCAA's initial eligibility requirements, the NCAA is not guaranteed victory. 265 For example, during a preliminary injunction analysis, one pre-<i>Martin</i> court determined that the NCAA would lose little by granting a waiver to a student-athlete with a learning disability. 266 Furthermore, cases in which the NCAA prevailed arose out of preliminary motions, and therefore future litigation that concludes in a trial may not dictate the same result. 267 Therefore, in future litigation, the NCAA should request the same level of deference that courts continually afford to schools and other academic institutions, as recently outlined in <i>Doe</i>. 268

261 See <i>Doe</i>, 2003 WL 22097782, at *4-9; <i>Cole</i>, 120 F. Supp. 2d at 1070-72; <i>Ganden</i>, 1996 WL 680000, at *1, *12.

262 See <i>Doe</i>, 2003 WL 22097782, at *4-9; <i>Cole</i>, 120 F. Supp. 2d at 1070-72; <i>Ganden</i>, 1996 WL 680000, at *1, *12.

263 See <i>Doe</i>, 2003 WL 22097782, at *4-9; <i>Cole</i>, 120 F. Supp. 2d at 1070-72; <i>Ganden</i>, 1996 WL 680000, at *1, *12.

264 See <i>Doe</i>, 2003 WL 22097782, at *4-9; <i>Cole</i>, 120 F. Supp. 2d at 1070-72; <i>Ganden</i>, 1996 WL 680000, at *1, *12.

265 See <i>Doe</i>, 2003 WL 22097782, at *4-9; <i>Cole</i>, 120 F. Supp. 2d at 1070-72; <i>Ganden</i>, 1996 WL 680000, at *1, *12; <i>NAT'L COLLEGIATE ATLETIC ASS'N</i>, supra note 85.


267 See, e.g., <i>Cole</i>, 120 F. Supp. 2d at 1062, 1070-72; <i>Ganden</i>, 1996 WL 680000, at *1, *14-16.

268 See 2003 WL 22097782, at *4-9. Ruling in favor of The Haverford School, the <i>Doe</i> court held that courts should afford the same level of deference to schools as to what constitutes a fundamental alteration as they would in determining whether a modification would be reasonable. <i>Id.</i> at *8. Although schools are not without restraints in reaching that decision—namely, they must consider feasibility, cost, and alternative means to achieve the modification—the court noted that courts generally will not substitute their judgment for that of schools. <i>Id.</i> at *6, *8. The reason for such deference, the court . . . is that educa-
D. The NCAA Deserves the Same Deference Courts Have Afforded to Other Academic Institutions

Although the reasons for providing deference to academic institutions outlined in *Doe* should dictate similar deference towards the NCAA's decisions, in the past, courts have not afforded the NCAA the same level of deference that they have accorded to schools. At least one scholar espouses a lesser standard of deference towards the NCAA by categorizing the NCAA's purpose as regulating intercollegiate athletics and claiming that the NCAA may not have the expertise to determine whether a student-athlete with a learning disability can perform academically in college. Specifically, it is argued that even taking into account the experts participating in the individual inquiry during the waiver request process, because the NCAA assessments are measured against the standards that the NCAA created—and which may be more rigorous than those of a member institution—the NCAA has the sole discretion to prevent a student-athlete with a learning disability from receiving a college education.

Such criticism is misplaced, however. First, characterizing the NCAA's purpose as regulating intercollegiate athletics diminishes the importance of academics in intercollegiate athletics. In doing so, this approach ignores that the NCAA's purpose is to integrate college academics and athletics. Indeed, the NCAA's emphasis on academics is what prevents collegiate athletics from becoming essentially an amateur league for professional sports. Furthermore, it is precisely because the member institutions, the same schools to which courts have afforded such deference, were not all upholding their own academic standards with regard to student-athletes that the NCAA intervened and implemented academic requirements. In fact, since the NCAA implemented its academic requirements, the NCAA has found that

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269 *Compare id.* at *4–9 (according deference to a school), *with Matthews, 179 F. Supp. 2d* at 1226–27 (demonstrating less deference to the NCAA).

270 *See, e.g., Weston, supra note 2, at 1120–21.*

271 *See id. at 1120–23.*

272 *See infra notes 273–304 and accompanying text.*

273 *See Weston, supra note 2, at 1120.*

274 *See *NAT'L COLLEGIATE ATHLETIC ASS'N, supra note 85.*

275 *See id.*

276 *See Baker & Connaughton, supra note 92, at 147–50.*
academic achievements of its student-athletes have improved.\textsuperscript{277} Furthermore, in the same way that a college's inclusion of moral and ethical values in its mission statement does not automatically diminish its stated academic purpose, the NCAA's simultaneous regulation of athletics does not automatically diminish its stated academic purpose.\textsuperscript{278} Therefore, to provide the NCAA with a lower level of deference than courts afford to academic institutions improperly ignores the fact that the NCAA, like schools, holds academics as central to its purpose.\textsuperscript{279}

Additionally, courts should defer to the NCAA's judgment because, like schools, the NCAA has expertise in the area of academic requirements.\textsuperscript{280} Courts traditionally have deferred to the judgment of academic institutions because those institutions are in the best position to evaluate academic requirements.\textsuperscript{281} In that regard, the NCAA is no different from schools.\textsuperscript{282} The DOJ's consent decree required the NCAA to install a team of experts on learning disabilities trained to evaluate student-athletes' waiver applications.\textsuperscript{283} Furthermore, the NCAA has recorded an improvement in student-athlete academic performance after the implementation of the initial eligibility requirements.\textsuperscript{284} That improvement illustrates that the initial eligibility requirements, at least, have achieved their intended effect.\textsuperscript{285}

Furthermore, it is irrelevant that the NCAA's initial eligibility requirements do not exactly match the admissions standards for all academic institutions.\textsuperscript{286} First, because participation in college athletics increases the number of responsibilities of student-athletes, the NCAA has determined that to succeed as a student while bearing the burdens of an athlete, most student-athletes must meet a minimum level

\textsuperscript{277} See Nat'l Collegiate Athletic Ass'n, The NCAA and Academic Reform, at http://www.nca.org/releases/currentTopics/academicReform.html (last visited Mar. 15, 2005). The NCAA considers its initial eligibility requirements a success because "[t]he overall graduation rates of student-athletes have risen faster than those for the student body as a whole and the graduation rate for African-American males has dramatically increased over their counterparts in the student body." \textit{Id.} The NCAA admits, however, that for some groups of student-athletes—namely, African-American male basketball players—the academic success levels continue to concern the NCAA. \textit{Id.}


\textsuperscript{279} See Weston, supra note 2, at 1120–21.

\textsuperscript{280} See Consent Decree, supra note 119.

\textsuperscript{281} See Doe, 2003 WL 22097782, at *6–8.

\textsuperscript{282} See \textit{id.} at *4–9.

\textsuperscript{283} See Consent Decree, supra note 119.

\textsuperscript{284} See Nat'l Collegiate Athletic Ass'n, supra note 277.

\textsuperscript{285} See \textit{id.}

\textsuperscript{286} See Weston, supra note 2, at 1120–21.
of academic aptitude, namely the minimum initial eligibility requirements.\textsuperscript{287} Second, predicting a student's academic progress, regardless of the specific standards, is difficult, and the NCAA, like colleges and universities, can evaluate student-athletes only on criteria such as their high school performance and accepted standardized test scores.\textsuperscript{288} Furthermore, because such calculations cannot always predict a student's potential achievement, the NCAA's experts conduct individual inquiries into a student-athlete's circumstances and, upon finding that the student-athlete could perform academically at the college level, may waive the initial eligibility requirements.\textsuperscript{289} Therefore, not only does the NCAA use the same criteria as most colleges and universities to judge a student-athlete's potential college academic performance, but it also goes beyond that evaluation to allow for individualized inquiries.\textsuperscript{290}

Finally, assuming that the NCAA has the same level of expertise as most colleges in evaluating a student-athlete's potential academic performance, allegations that the NCAA may prevent a student from attending the college of the student's choice are both incorrect and misplaced.\textsuperscript{291} The claim is incorrect because the NCAA does not prevent any student from attending college.\textsuperscript{292} By deeming student-athletes non-qualifiers, it may prevent some student-athletes from participating in intercollegiate athletics and receiving athletic-based financial aid during their first years.\textsuperscript{293} Those restrictions, however, do not prevent those students from attending the college without participating in athletics.\textsuperscript{294} Nor do they prevent colleges or private sources from providing the same students with other forms of aid or scholarships that are distinct from athletic scholarships.\textsuperscript{295} Furthermore, students deemed non-qualifiers during their first years may qualify to compete in intercollegiate athletics during the remainder of their college careers—including a possible fifth year of college that


\textsuperscript{288} See Gratz v. Bollinger, 539 U.S. 244, 252-54 (2003) (discussing the University of Michigan's admission criteria for prospective students, including the use of high school performance and standardized test scores).

\textsuperscript{289} See Nat'l Collegiate Athletic Ass'n, supra note 91, at 145.

\textsuperscript{290} See id.

\textsuperscript{291} See Weston, supra note 2, at 1120-21.

\textsuperscript{292} See Nat'l Collegiate Athletic Ass'n, supra note 91, at 148.

\textsuperscript{293} See id.; see also Denbo, supra note 132, at 202-03 (discussing the argument that student-athletes should not be allowed to participate in sports during their first years of college).

\textsuperscript{294} See id.

\textsuperscript{295} See id.
would provide a fourth year of athletic eligibility—if they show academic accomplishment.296

Additionally, the claim is misplaced because it criticizes the NCAA for actions in which colleges regularly engage.297 Specifically, the NCAA's classification of a student-athlete as a non-qualifier because of a lack of academic achievement is no different than a college denying a prospective student admission for the same reason.298 For example, assuming a student meets the NCAA's initial eligibility requirements, but fails to meet a college's admissions requirements, the college admissions office makes the final decision on whether the student may attend that college.299 Criticism has not centered on the admissions office's judgment simply because it makes the final decision on admissions.300 Therefore, as long as the NCAA makes its decision in an equally as reasoned way as a college admissions office, the fact that it has the last word on its initial eligibility requirements should not warrant any less judicial deference than would be afforded to a college.301

Consequently, because the NCAA shares the same purpose as academic institutions—namely, maintaining academic integrity—and because the NCAA maintains a level of expertise in college academic performance commensurate with many colleges, courts should give the NCAA the same level of deference they afford to academic institutions when evaluating Title III claims.302 Courts, thus, should use the Doe court's interpretation of the Martin standard, ignoring for the purposes of the evaluation the two-pronged fundamental alteration test.303 In that way, the NCAA can protect its mission to maintain both its academic and athletic standards while continuing to make reasonable and necessary modifications for individuals with disabilities.304

CONCLUSION

The ADA provides student-athletes with learning disabilities a right to demand reasonable modifications to the NCAA's initial eligi-

296 Id.
297 See Weston, supra note 2, at 1122–23.
298 See id.
299 See Nat'l Collegiate Athletic Ass'n, supra note 91, at 129.
300 See Weston, supra note 2, at 1122–23.
301 See id.
303 See Doe, 2003 WL 22097782, at *4–9; see also Martin, 532 U.S. at 682–83, 688.
304 See Nat'l Collegiate Athletic Ass'n, supra note 91, at 145; Nat'l Collegiate Athletic Ass'n, supra note 85.
bility requirements. That right is not without limits, however. The ADA itself provides that places of public accommodation are not required to implement modifications that would fundamentally alter the nature of their services. Furthermore, courts, including the U.S. Supreme Court in *PGA Tour, Inc. v. Martin*, have repeatedly recognized the importance of that limitation on the scope of Title III. Most noticeably, perhaps, courts have allowed academic institutions to prevail with that defense, commenting that many modifications could undermine the scholastic integrity of such institutions. Because the NCAA, like most schools, maintains a goal of high academic achievement, courts should provide the NCAA with the same level of deference they provide to schools. Only then can the NCAA achieve its goal of integrating academics and athletics, and only then can the NCAA ensure that intercollegiate athletics maintain their place in American culture.

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