

Win, Lose, Score a Deal:
Student-Athletes'
NIL Rights





Colleges and universities are no longer the only beneficiaries of the financial rewards associated with the skills and celebrity of high-performing athletes. Student-athletes in the U.S. who want to profit off the playing field or court from their personal brands have received a boost from the revision of name, image, and likeness (NIL) rights. Here's an overview of developments in recent years.

BY JOSHUA M. FRIESER

Intercollegiate athletics has gone through a significant transformation since 2021, with the National Collegiate Athletic Association (NCAA) modernizing its rules related to name, image, and likeness (NIL) rights for student-athletes. This shift, marked by a handful of landmark events and legal decisions, has altered how collegiate student-athletes may engage in commercial activity, providing them with opportunities to profit from their personal brands and operate business ventures. Beginning with the U.S. Supreme Court's decision in the *Alston* case and the first state NIL laws, through the rise of NIL collectives and university revenue sharing, the evolution of NIL demonstrates a dynamic and ever-changing landscape in the college sports industry. Likewise, the robust NIL market has created opportunities for attorneys to provide counsel to a variety of industry stakeholders in multiple substantive practice areas.

Pre-NIL Court Rulings and Legislative Activity

For over 100 years, the NCAA disallowed "student-athletes" from engaging in any commercial activity and from receiving compensation for their participation in athletics – including, at first, the ability to receive an athletic scholarship.¹ Although the NCAA eventually relaxed its restrictions on student-athletes receiving scholarships, it continued to restrict commercial activity and "pay-for-play" until recent years.

One of the first successful challenges to the NCAA's restrictions on collegiate student-athletes engaging in commercial activity was an antitrust suit brought in 2009 by former UCLA men's basketball player Ed O'Bannon.² O'Bannon argued that the NCAA violated antitrust laws by restricting players from receiving compensation for their names and

likenesses, particularly in EA Sports video games. (EA Sports is the sports video game publishing label of Electronic Arts, a video game company headquartered in Redwood City, California.) While the case did not ultimately result in student-athletes receiving the ability to profit from their NIL, it did increase the total benefits pool that flowed to student-athletes, up to the full cost of attendance.

In the wake of the Ninth Circuit Court of Appeals' decision in the *O'Bannon* case in 2015, several more antitrust lawsuits were filed against the NCAA and its member conferences, challenging other commercial restrictions the NCAA imposed on student-athletes. The cases were combined and ultimately reviewed by the U.S. Supreme Court in *NCAA v. Alston*.³ In June 2021, the Supreme Court unanimously ruled that the NCAA's restrictions on education-related benefits that a student-athlete could receive violated antitrust law. While the *Alston* case itself did not address NIL rights, it changed the framework for how lower courts should view the NCAA's commercial and noncommercial restraints (for example, eligibility) on student-athletes. Importantly, the Supreme Court clarified that the NCAA was not entitled to a deferential antitrust analysis of its rules regulating student-athlete eligibility – a position that had been taken by multiple federal appellate courts.⁴

In addition to antitrust challenges to the NCAA's NIL restrictions, states began passing legislation to curtail the NCAA's prohibitions on student-athletes engaging in commercial activity. In 2019, California was the first state to pass an NIL law.⁵ Other states followed suit shortly thereafter. The state NIL laws were primarily passed to limit the NCAA from punishing student-athletes (or their universities) for profiting from their NIL.

The Beginning of the “NIL Era” of College Athletics

Shortly after the Supreme Court's decision in *Alston*, the NCAA pivoted on its NIL restrictions and permitted student-athletes to monetize their rights of publicity, starting on July 1, 2021. With the NCAA facing challenges on antitrust grounds, the NCAA passed an interim policy for NIL activity.⁶ While student-athletes were permitted to endorse commercial products, sign sponsorship deals, and promote their own businesses, the NCAA did not permit NIL deals to be tied to athletic performance (that is, pay-for-play) or recruiting inducements to attend a particular institution. Additionally, the NCAA's interim policy permitted student-athletes to hire marketing agents to represent themselves in sourcing and negotiating NIL deals.

A few student-athletes, such as Livvy Dunne, Cooper Flagg, and Shedeur Sanders, have reportedly earned millions of dollars in NIL payments.⁷ These high-profile performers have appeared in national ad campaigns and television commercials, engaged in sponsored social media posts, and signed licensing agreements. With student-athletes receiving cash, equity, and royalty

payments, top earning student-athletes have had to navigate complex sponsorship and licensing agreements, operate corporate entities (many student-athletes have set up a limited liability company or other corporate entity), pay taxes as a self-employed independent contractor, and manage a valuable intellectual property portfolio.

While student-athletes have been able to receive life-changing compensation, modest spending money, or free meals, and everything between, the initial days of the NIL era did not come without challenges. Many athletes were not paid what they had been promised. Others were taken advantage of by unscrupulous “NIL agents.” Some prominent examples of student-athletes whose NIL deals have resulted in contract disputes include the following:

- Gervon Dexter, the former Florida Gator who turned to court to void an agreement under the state NIL law in which he traded 15% of his future NFL career earnings in exchange for a one-time payment of over \$400,000;⁸
- Marvin Harrison Jr., the former Ohio State star who was sued by Fanatics for allegedly breaching an agreement he signed with the company before his final season of college football;⁹ and

• Jaden Rashada, the now Sacramento State and former Georgia and Arizona State quarterback, who made headlines during his high school recruitment and has since filed suit against the University of Florida head football coach, a staff member, and a university booster.¹⁰

Likewise, international student-athletes have faced ongoing challenges related to their visa and immigration status. Most international student-athletes are in the United States on an F-1 visa, which restricts the type of work a holder is permitted to engage in. NIL is usually considered to be “work” under immigration laws because the athlete will be working as a 1099 independent contractor in engaging with sponsors. Zach Edey, the former Purdue star and two-time National College Player of the Year, is the most notable example of a student-athlete who had to navigate this landscape and likely lost out on millions of dollars of potential income. Because Edey is a Canadian citizen, he was unable to engage in any NIL activity in the U.S. during the basketball season.

The Rise of NIL Collectives

While NCAA member institutions sought to comply with the NCAA's prohibitions on pay-for-play and recruiting inducements, “NIL collectives” began to form shortly after the new rules went into effect.¹¹ Although NIL collectives can function in different ways – there is a mix of nonprofit, not-for-profit, and for-profit collectives, with some collectives having both nonprofit and for-profit arms



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– these organizations typically pool booster funds to promote NIL activities and increase student-athlete earning potential at a particular university.

NIL collectives have become increasingly involved in student-athlete recruiting and compensation, with some collectives reportedly funding multimillion-dollar operations. NIL collectives have various ways of generating revenue, such as soliciting booster donations, receiving licensing and sublicensing fees, selling products, and hosting events. These funds are then distributed to student-athletes at the collective's preferred university, often in exchange for the student-athletes' promotion of certain products or grant of a license to their NIL. NIL collectives that have distributed a greater amount of compensation to student-athletes have been able to assist their preferred university with recruiting and retaining players.

Although the NCAA's interim guidance prohibited NIL deals being tied to athletic performance or used as recruiting inducements, NIL collectives pushed the envelope on both primary restrictions. To date, however, the NCAA has sanctioned only two institutions for violating recruiting contact rules for coordinating impermissible NIL-related conversations with boosters and collectives: the University of Miami in 2023 and Florida State University in 2024.

The involvement of booster-funded NIL collectives in the recruiting of student-athletes reached a high-water mark when the states of Tennessee and Virginia filed suit against the NCAA in early 2024. The state attorneys general argued that the NCAA's prohibition on NIL collectives offering NIL deals to prospective student-athletes as recruiting inducements violated antitrust law by suppressing market value. The states were granted a preliminary injunction and the case ultimately settled, with the NCAA removing its restriction on NIL collectives and boosters offering student-athletes NIL deals that were contingent on attendance at a particular institution.¹²

State and Federal NIL Legislation

The initial years of the NIL era have been marked by high-profile athletes signing noteworthy deals and a patchwork of state legislation that attempted to give in-state institutions the upper hand. When the NCAA first announced its interim NIL policy, it directed athletes and institutions to follow their respective state NIL laws. Some states, such as Wisconsin, have never passed an NIL law. Others, such as Alabama and Florida, have passed NIL laws and then amended or repealed them, in an effort to remain as competitive as possible in the recruiting landscape. State legislative efforts have attempted to address various concerns, including the NCAA sanctioning in-state institutions, exempting student-athlete NIL income from state income taxes, and expressly permitting in-state institutions to directly compensate student-athletes for their NIL.¹³

Additionally, members of Congress have held dozens of hearings on NIL and introduced a variety of federal NIL legislative proposals. No legislation has gained any significant traction or come to a vote in either the House of Representatives or the Senate. Many commentators believe that federal NIL legislation is now significantly more plausible with a Republican president and Republicans controlling the House and the Senate. To that extent, President Trump issued an executive order titled "Saving College Sports" on July 24, 2025.¹⁴ The executive order announced policy directives for governmental antitrust regulators (that is, the U.S. Attorney General and the Federal Trade Commission) and encouraged Congress to pass federal NIL legislation, thus preempting state NIL laws and creating a more uniform landscape.

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The House Settlement and New Revenue-Sharing Model

In June 2025, the NCAA and the “Power 5” conferences settled an antitrust class action that paves the way for student-athletes to be directly compensated by universities via revenue sharing.¹⁵ The *House* case, originally filed in 2020, challenged the NCAA’s then prohibition on student-athletes’ ability to receive compensation for their NIL and earn a share of revenue derived from the broadcasts of athletic contests. The NCAA and the Power 5 conferences will pay current and former Division I student-athletes nearly \$2.6 billion in back payments over 10 years, with a new revenue-sharing structure in place moving forward.

Beginning July 1, 2025, Division I universities have been able to directly compensate student-athletes for a license of their NIL, as well as the right to sublicense it to third parties. It is estimated that \$1.6 billion per year in new compensation and benefits will flow to student-athletes because of the new revenue-sharing model. Each Division I institution will have a payment cap of 22% of the average revenue of the Power 5 conference members – \$20.5 million per school for the 2025-26 academic

year, with the cap expected to increase each year thereafter.

In addition to the hundreds of thousands, or in some cases, millions of dollars that are flowing from universities to student-athletes pursuant to revenue-sharing agreements, universities and student-athletes are exchanging a significant number of promises and attached obligations. Initial revenue-sharing agreements have included complex licensing language, broad waivers and releases of legal claims, high-value buyout clauses, and covenants to perform by student-athletes. Not only has the relationship between university and student-athlete become significantly more complex, the legal and financial implications of the relationship souring has likewise become more significant. In the first instance (but surely not the last) of an NCAA member institution seeking to enforce its rights under a revenue-sharing agreement with a student-athlete, the University of Wisconsin-Madison recently filed a lawsuit against the University of Miami. The University of Wisconsin’s complaint alleged that Miami tortiously interfered with its contractual relationship with a member of its football team.¹⁶

NIL at the High School Level

While NIL has been most prominent in the college and university athletics landscape in recent years, it has reached high school sports as well. More than 40 states now permit high school athletes to engage in NIL activity, with the Wisconsin Interscholastic Athletic Association (WIAA) being the most recent state high school athletic association to change its bylaws to permit NIL. On April 25, 2025, WIAA members voted to allow high school students in the state to receive compensation for their NIL, so long as the compensation is not related to athletic performance or their status at a particular school.¹⁷

Generally, high school athletes face many of the same legal challenges that collegiate student-athletes face. Moreover, as NIL continues to be a focal point in the college athletics recruiting landscape, more high school athletes will be entering into revenue-sharing and NIL deals that are conditioned on their enrollment at a particular college or university.

Opportunities for Attorneys Moving Forward

The need for legal counsel only continues to grow in the college athletics and NIL industry. Student-athletes have a variety of new legal needs, and universities, sponsors, and service providers all require legal support on various matters as well. Additionally, the NIL industry draws on several substantive practice areas, which provides opportunities for experienced attorneys.

Contract Drafting, Review, and Negotiation. For over four years, student-athletes have been signing contracts with sponsors and NIL collectives. Additionally, student-athletes have entered into agreements with sports and marketing agencies to represent their interests. Likewise, with the *House* settlement finalized, student-athletes will continue to enter into revenue-sharing agreements with Division I institutions. Drafting, reviewing, and providing counsel on these transactions comprises a large share of

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the legal needs related to the NIL space. In addition to payment terms, NIL contracts frequently contain licensing language, dispute resolution provisions, and clauses regarding intellectual property ownership. Attorneys can provide value by assisting universities, sponsors, student-athletes, and sports marketing agencies with these agreements.

Intellectual Property. While NIL contracts typically contain intellectual property language, student-athletes may need assistance from counsel to register trademarks and copyrights, enforce intellectual property rights against an infringing third party (or defend against third-party infringement claims), and navigate the intellectual property landscape of social and digital media.

Business Planning and Organization. Collegiate student-athletes are not – as of this writing – employees of their universities, conferences, the NCAA, or NIL collectives with which they have entered into agreements. Likewise, in nearly all circumstances, student-athletes will not be employees of the sponsors with whom they enter into NIL deals. Otherwise, student-athletes are considered self-employed independent contractors. Many student-athletes have

sought the protections and benefits of establishing a limited liability company.

Tax. As independent contractors and intellectual property rights holders receiving royalty payments, student-athletes deal with a more complex tax structure than a typical W-2 employee would. Attorneys can assist athletes with navigating tax elections, claimed deductions, and other unique tax issues.

Immigration. With nearly 25,000 international student-athletes competing in NCAA sports, there is a significant need for assistance with navigating the NIL landscape. International student-athletes frequently consult legal counsel to understand the limitations of their visas. Additionally, many student-athletes have been able to apply for and receive non-student visas (for example, O-1) to be able to participate in the NIL marketplace.

Litigation and Dispute Resolution. As detailed in this article, there are ample possibilities for parties to have NIL-related legal disputes. So far, only a handful of collegiate student-athletes have turned to courts for relief or have been a defendant in a lawsuit, but the expectation among industry leaders is that litigation will likely increase in the wake of the *House* settlement. As student-athletes earn

more, universities are capped in total NIL compensation, and frequent player transfers continue, parties will continue to enforce contractual rights, payment terms, and buyout clauses.

Additionally, the *House* settlement established a new clearinghouse, which will review third-party NIL deals that student-athletes agree to. The clearinghouse, NIL Go, will be operated by the new College Sports Commission and can reject reported NIL deals based on certain criteria.¹⁸ Student-athletes will have the opportunity to appeal any rejected deals to a neutral arbitrator. This arbitration process is in addition to arbitration that may be agreed to as a dispute resolution option when negotiating the initial agreement.

Conclusion

The NIL industry has grown significantly over its first four years of existence. As universities directly compensate student-athletes for their NIL, the landscape will only become more robust. The unique interplay of a variety of substantive areas of law continues to create opportunities for attorneys to assist student-athletes and provide valuable counsel. **WL**

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