



NAME, IMAGE, AND LIKENESS ("NIL") INSTITUTIONAL REPORT

JANUARY-FEBRUARY 2022

"With NIL comes many new opportunities and challenges for college sports. The LEAD1 NIL Institutional Report helps our members navigate through these changes."

—Tom McMillen, President and Chief Executive Officer of LEAD1 Association

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The NIL Institutional Report

NIL

The Tom McMillen Federal NIL Scoop

By Tom McMillen, President and Chief Executive Officer of LEAD1. McMillen is a former Congressman, college basketball All-American, Rhodes Scholar, and NBA player, who took over LEAD1 in 2015.

Thank you for reading the fourth issue of the *LEAD1 NIL Institutional Report*.



Tom McMillen

Since our third issue released in the fall, the NCAA has adopted a new constitution that will set some of the framework for NCAA Division I to structure itself as it deems necessary over the next several months. In terms of federal legislation, the essential issue in the Congress regarding a federal college sports bill is whether such bill should be devoted solely on creating a standard of national NIL regulations, or whether it should also include other broader issues, such as greater health and safety protections and employment rights for college athletes.

As I have often stated a “crisis” may need to occur for the Congress to get involved in college sports. A college athlete suffering significant harm due to lack of regulatory oversight, for example, could unfortunately create the type of impetus for the Congress to get involved in college sports. Certainly, college sports has been under congressional scrutiny given some of the recent lucrative football coaches’ contracts. In fact, Rep. Bill Pascrell (D-N.J.) recently announced an inquiry on whether these massive coaches’ contracts potentially abuse the tax code by schools utilizing tax-exempt status. While the Congress has many other important issues to address such as COVID-19, infrastructure bills, and midterm elections later this year, college sports is at least on the

congressional radar in 2022.

In terms of the NCAA’s transformation process, each division will have independent authority to organize itself as it deems necessary, consistent with principles outlined in the NCAA’s recently ratified constitution. On NIL, the new constitution states that each division shall establish guidelines regarding student-athlete benefits, including commercialization of NIL, and codifies that member institutions and conferences must provide their NIL policies to student-athletes. Before NCAA Division I establishes its own rules on NIL, in the interim, how the NCAA enforces NIL will impact their ability to defend the principle of “amateurism” in the courts, because allowing NIL deals unattached to intrinsic market value could undermine their ability to defend amateurism under antitrust law. Furthermore, if the NCAA is truly investigating some member institutions for potential pay-for-play violations, the association is being truly inconsistent and contradictory to previous positions given their permissive Interim NIL policy. In other words, the NCAA is walking a very difficult line needing to be tough enough to defend amateurism, but still consistent with their previous policies.

So while the Congress seems to have punted on NIL in the near term, as for LEAD1, we stand ready to assist the NCAA Division I’s Transformation Committee, which will establish the guidelines regarding the commercialization of NIL and prevent the exploitation of student-athletes or abuses by individuals or organizations not subject to the authority of a student-athlete’s school.

However these issues play out, we will keep you educated on the intersection between the Congress and college sports in future issues of the *LEAD1 NIL Institutional Report*. Enjoy the reading! ■

IN THIS ISSUE

**The Tom McMillen Federal
NIL Scoop 2**

TECHNOLOGY PRESENTED BY SPRY

**Reflections and Looking
Forward to NIL in 2022..... 4**



**SOCIAL MEDIA AND BRAND
BUILDING PRESENTED BY INFLCR**

**Level-Setting NIL
Expectations with Data,
Objectivity and Patience..... 5**



**FINANCIAL PLANNING
PRESENTED BY TEAMALTEMUS**

**It's 1099 Season, are Your
Student-Athletes Ready? 6**

TEAM ALTEMUS



**LEGAL PRESENTED BY
BRICKER & ECKLER**

**NIL, the Transfer Portal,
and NCAA Absenteeism: A
Three-Headed Monster 7**



**NIL and Collectives: The
Title IX Question 8**

**NCAA Infractions
Questions Emerge as
Institutions Push NIL Limits ... 9**

**Colleges Use FERPA
as a Shield to Protect
Disclosure of NIL Contracts . 10**

**Can International College
Athletes Monetize Their
NILs? It's Complicated 11**

**NIL at 6 Months—What
NCAA Member Schools
Should Know and Do For
and On Behalf of Their
Athletes..... 12**

**MEDIA RELATIONS
PRESENTED BY FINN**

**Catching Up with
Universities on NIL
Communications..... 13**



**SPORTS BETTING PRESENTED
BY ENTAIN**

**Changing Landscape of
Collegiate Sports Goes
Beyond NIL; Includes
Sports Betting..... 14**



**LEAD1 Highlights Latest
Trends on Intersection
Between Sports Wagering
and NIL..... 15**

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TECHNOLOGY presented by Spry

Reflections and Looking Forward to NIL in 2022

By Lyle Adams, CEO of Spry



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I don't know about you, but it is hard to believe that 2021 is over and we are already several weeks into 2022. The team at Spry recently had a chance to sit down and reflect on the first six months of NIL. Below we share some of the discussion points that were raised among Spry staff and Advisory Board members.

Collectively, 2021 was the year of excitement for NIL. The first six months of the year were filled with much preparation and anticipation, while the latter half of the year gave us the first look at the impact NIL will have on our nation's collegiate athletics. With a full fall sports season completed and about a half of the winter season, we saw deals of all different types and magnitudes be transacted in 2021!

WHAT WE ALL THOUGHT:

- That businesses were going to start reaching out to student athletes starting July 1 and that compliance departments would be inundated with disclosures to review and respond to.
- The world (and collegiate athletics) would end (Y2K). For many, the thought of NIL was too much. There was no way that "collegiate amateur athletics" would survive.
- Leading up to July 1, there was a very strong belief that NIL would be heavily regulated by the NCAA. It was assumed that the NCAA would distribute strict

guidelines and consequences for all NIL deals.

- Many thought the vast majority of NIL opportunities would go to football and men's basketball, but we have seen otherwise. Yes, the biggest and most flashy deals have been inked in football and basketball but we have also recorded a wide variety of smaller deals signed across all collegiate sports.
- That NIL would be used and abused as a recruiting inducement.
- Many student athletes would be negatively impacted financially (and with their education).

WHAT WE ARE SEEING:

Despite how fragmented the rules and regulations have been up until this point—with NCAA guidelines, state legislation, and school policies— student athletes across all divisions have not been shy to take advantage of NIL. Most student athletes are remaining compliant throughout this process and we are seeing the programs that are utilizing technology and software to their advantage are yielding more interaction and participation from their student athletes.

- Businesses are not going to reach out (to 99% of student athletes) and athletic departments are not going to be inundated with disclosures. However, we know that opportunities are out there for ALL student-athletes, if they want to put the time in. For example Chloe Mitchell, a volleyball player from Aquinas College, which is part of the NAIA, has capitalized on her social media standing and secured several sponsorships due to her hard work both on and off the court.
- The NCAA, to date, has provided only very loose guidelines around NIL with

very little regulation. It came as a huge surprise when the NCAA chose to allow NIL to be managed on a state level with very little federal oversight. Along the same lines we all thought that student athletes would be required to disclose NIL requirements, but with little regulation or consequence — that isn't the case. Thus many disclosures have not been reported.

- Regarding NIL deals that have been signed, women's basketball has out-paced men's basketball almost 2:1.
- While we can assume that NIL has had some impact on recruiting, it is too early to assess the extent of its impact until we have been through a full year of NIL and a full recruiting cycle.

BEST PRACTICES:

- From an athletic department standpoint, we've seen two different camps; those who've been proactive and those who've been reactive in regards to NIL. Schools that have been diligent in creating a coherent institutional policy, as well as, equipping their student athletes with the necessary resources and tools (education, technology, etc.) have made their department's lives much easier and empowered their student athletes in the process.
- Incorporating and relying on technology will allow for streamlined communication between all institution departments and student athletes.
- Education, education, education. It is up to the athletic departments to educate and thus, empower their student-athletes on NIL. Most schools and student athletes are not aware of these opportunities existing. We have seen a strong correlation between education of rules and these opportunities with

See REFLECTIONS on Page 17

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SOCIAL MEDIA AND BRAND BUILDING presented by INFLCR

Level-Setting NIL Expectations with Data, Objectivity and Patience

By Jim Cavale, INFLCR Founder & CEO



SPONSORED CONTENT

There is a lot to be excited about, just over six months into this new student-athlete Name, Image & Likeness (NIL) era of college sports.

Tens of thousands of student-athletes have taken important steps to grow their personal brands, creating upside for themselves beyond the game they play. Many of these student-athletes are building real businesses and creating real monetary opportunities that will have lasting impact on their lives long after their playing days are over. New marketing channels are being activated by student-athletes that benefit their respective campuses as well, increasing brand awareness and marketing reach, further engaging fans and recruits.

Universities have put systems into place to help student-athletes make the most of these new opportunities. College athletics departments are investing into high quality education, expert support, and streamlined technology across the nation at all levels of collegiate sports, for student-athletes to take advantage of in ways that can transform their lives forever.

More businesses are now realizing that NIL is an effective marketing tool. I expect them to continue to expand their budgets and thus, their involvement with student-athletes at the national, regional and local levels in partnerships that benefit both parties in exciting new ways.

With this newfound freedom, student-athletes are adding real-world entrepreneur-

ship to their collegiate experience, and college athletics programs are supporting that effort just as they support them in areas such as academics, career development, life skills, athletic training and nutrition.

These are good things.

But it's not all good.

Dangerous narratives being pushed threaten to raise unrealistic expectations and lead to risky and counterproductive decisions and behaviors. These narratives make it seem as if big NIL dollars are easy for every student-athlete to obtain, when this simply is not the case.

At the top, we see eye-popping numbers tossed around. A handful of highly publicized six- and seven-figure individual deals as part of a billion-dollar market, skews the data significantly.

I am encouraged by the NIL opportunities being generated by student-athletes, however the great majority have yet to realize big, six-figure deals (less than 1%, let alone five-figure deals (less than 10%). In fact, 75% of all NIL transactions disclosed in 2021 were less than \$200 (more 50% of transactions were for less than \$50).

While our data shows encouraging signs that real NIL opportunities exist across all sports and many athletes, the reality is that the majority of student-athletes haven't yet seen eye-popping monetization opportunities. The median transaction in those first six months? \$51.

However, the market is maturing. The average NIL transaction disclosed in July of 2021 was \$914. That number increased to \$1,214 in December. That median transaction rose from \$21 in July to \$51 in December. The revenue opportunity for student-athletes grows in direct proportion to the education of the industry. We are in the infantile stages of student-athletes generating revenue. As the market's knowledge

on HOW and WHERE to spend those dollars increases, so too will the flow of revenue to student-athletes.

This is where the skewed perspective can mislead many. When we see that star quarterback receiving a 7-figure endorsement deal, it can give administrators, coaches, boosters and especially student-athletes the wrong idea that NIL is easier and more lucrative than reality, and therefore, student-athletes, coaches and college athletic programs have failed if these dollars do not materialize in their respective situations.

This kind of thinking has the potential to negatively impact what NIL could be. It's unhealthy on many levels.

Let's start with simple math. Many people have agreed that this new market will exceed \$1B annually, as soon as 2023. If you divide that sexy \$1B number by 480,000 NCAA student-athletes, the average is about \$2,100 per athlete. Similar to most markets, the top 1-2 percent will make the majority of the money — their combination of respective student-athlete's athletic performance and branding initiative, let alone how they accomplished this top-tier combination of the two, is for a whole other article — so the reality is that in relation to the rest of the student-athlete NIL market, four or five figure NIL revenue should be considered a major success for student-athletes and institutions alike.

There's absolutely nothing wrong with that, and it's important that this fact be driven home. It's important for athletes and institutions to rally around the fundamental reality that achieving NIL success is hard work and that one individual's elite success does not represent another individual's failure.

With that said, I'm excited about the big picture of the first six months and for what

See **LEVEL-SETTING** on Page 18

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FINANCIAL PLANNING presented by TeamAltemus

It's 1099 Season, are Your Student-Athletes Ready?

By Courtney Altemus, CEO and founder of TeamAltemus

TEAM ALTEMUS



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Happy 2022! December 31st not only marked the end of 2021 but also the end of the first six months of NIL. Many student-athletes (SA's) benefitted and earned compensation during those six months. By the end of January, 1099s will have been distributed. Are your SA's ready? Do they know they need to first make sure they have compiled all their 1099s? Do they know that once they have all of them they need to compare them with their records to ensure accuracy? Do they know what questions to ask? Do they know how to file taxes or who to ask about filing taxes? Do they know receiving 1099s doesn't mean they may actually have to file?

We aren't CPAs or tax return preparers but we do help SA's learn what they need to do to prepare and understand information prior to seeking assistance from tax professionals, whether in-person or on digital tax filing applications.

Even with education about taxes, the difference between learning about taxes and applying that education to filing tax returns is drastic. Even the process of assessing income and expenses to determine if one needs to file is overwhelming especially when the person already has two full-time jobs; student and athlete.

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Athletic departments that TeamAltemus has worked with and are subscribed to our micro learning app can direct their SA's to the app for information review and our step-by-step tax preparation guide. It starts with gathering 1099s and teaching how to read them.

We've learned from years of working with rookies in the professional athlete world and now with SA's, that reinforcing the fact that the IRS isn't a compliance or a rules committee is critical. As elite athletes, they're used to coaches, parents, teachers and advisors guiding them. It takes time for them to understand that the IRS doesn't care about their busy school and sports schedules, or that they're first-time filers. Meanwhile, school and sport obligations aren't paused to allow time for tax preparation. The following are a few high-level tips for what SA's may need to consider.

1099's & FEDERAL, STATE, LOCAL TAXATION LEVELS

- SA's may forget about 1099s if their home address is on their W-9 forms.
- Some 1099s come directly from an online marketplace instead of the entity they're doing work for.
- SA's should know as a 1099 income earner, they pay self-employment tax at the federal level.
- Tax rates vary depending on income.
- Different states have different rates, some have none and taxation may happen in multiple states depending on where they live and where they've conducted business.
- Hopefully they've been saving money along the way so that they have enough money to pay a tax bill.

CRYPTOCURRENCY AND NFT'S

We've talked to so many SA's this year who are under the false impression from false information that crypto currencies and NFT's are not taxable because of the unregulated nature of the market. Cryptocurrency trades and NFT sales ARE TAXABLE. The crypto and NFT tax situation is complex, the following is some important information.

- Just like publicly traded stocks, a crypto sale is a taxable event.
- Many platforms will issue 1099s without cost basis, so those records need to be kept manually.
- If the crypto was sold for a gain but loses value before being converted to dollars, the tax is still assessed on the gain.
- In the purchase of an NFT, it's considered a disposal of cryptocurrency once that crypto has been used for the purchase and is a taxable event.
- In the sale of an NFT, if held for at least one year, gains will be taxed at capital gains rates. If less than one year, they're taxed at ordinary income rates.
- Case in point: SA's need to understand their tax bracket.
- The IRS has not officially ruled on NFTs being defined as "property" (like art,) but if they are defined as such, capital gains rates will be higher.

Taxes are new to your SA's and can be a tremendous distraction from school and sports if they don't know where to start or how to proceed. Be sure to reach out if we can help. Here's to a healthy and fantastic 2022! ■

NIL, the Transfer Portal, and NCAA Absenteeism: A Three-Headed Monster

By Jeff Knight & Kasey Nielsen,
Bricker & Eckler LLP



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“Out of control.” “The wild west.” “New era of amateurism.” The narrative surrounding the first full recruiting period to feature NIL and one-time transfer rules basically writes itself these days. And soon, if it hasn’t already, that narrative will converge with another – the demise of the NCAA’s enforcement powers. Together, these intersecting narratives all but bait schools – and their boosters – into seeing how far they can go to land recruits.

NIL and the transfer portal on their own are enough to keep your compliance staff awake at night. Combined, they paint a picture that is just gray enough to lose sight of the fact that, while wounded, the NCAA’s compliance apparatus is still alive and well. So, while NIL opportunities have raised the profile of student-athletes in non-revenue generating sports, all while allowing those student-athletes the ability to earn money, the transfer portal serves to flatten the landscape, revealing that big NIL deals can live in small markets.

This market-flattening effect, however,

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is not going unnoticed by the NCAA, and the fact that the NCAA has largely abdicated its rulemaking ability on NIL should only serve a dose of irony, not comfort. Put simply, we don’t know how much NIL is factoring into student-athletes’ desire to transfer, but we do know that the question alone is enough to lead well-intentioned stakeholders into inadvertently creating a compliance nightmare for schools.

The only issue that remains is: how willing do we think the NCAA will be to open an investigation into NIL deals that look like impermissible inducements? The answer may not be terribly comforting.

While the NCAA’s quixotic journey to champion “amateurism” above all else was significantly curtailed by the Supreme Court in the *Alston*¹ decision, it’s not dead. Far from it. The NCAA’s enforcement staffers likely do not have the latitude that they once did, and there may not be much appetite, or money, left for certain enforcement pursuits. However, the courting of top-talent through the use of lucrative NIL opportunities is most certainly going to draw a look from the NCAA. It’s the proverbial moth to a flame.

Yet, in the post-*Alston* NIL world, NCAA enforcement *feels* dead. But *why*?

Alston was a direct hit to the NCAA, no doubt. But the narrowness of the Court’s decision often gets overlooked by the strong language found in Justice Kavanaugh’s concurring opinion. In fact, Justice Gorsuch, who authored the opinion of the Court, adopted the Ninth Circuit Court of Appeals’ rationale that “[t]he national debate about amateur-

ism in college sports is important. But our task as appellate judges is not to resolve it. Nor could we...”² So, while the Court was clear that the NCAA could not prohibit education-related benefits to student-athletes, it also left it to the NCAA to determine what a benefit related to education could mean.

Justice Kavanaugh, perhaps feeling slightly less obligation to be measured, went further, stating that “the NCAA’s current compensation regime raises serious questions under antitrust laws”³ and that “[t]he bottom line is that the NCAA and its member colleges are suppressing the pay of student athletes who collectively generate billions of dollars in revenues for colleges every year.”⁴ While Justice Kavanaugh may be tipping his pitches so to speak, putting too much focus on a concurring opinion may prove to be somewhat myopic for two reasons.

First, Justice Kavanaugh was addressing a question – or a series of questions – that was not before the Court, which necessarily means that the parties – specifically, the NCAA – had not had an opportunity to tee-up their briefing on the issues that the Justice was addressing. In fairness, there is nothing to believe that the NCAA has a cache of arrows left in its quiver to fire at these issues, but it certainly did not need to do so in this case.

Second, no other Justice signed onto Justice Kavanaugh’s concurrence. Now, we’d caution even the most ardent Su-

² *Id.* at 2166 (citing *In re Nat’l Collegiate Athletic Ass’n Athletic Grant-in-Aid Cap Antitrust Litig.*, 958 F.3d 1239, 1265 (9th Cir.)).

³ *Id.* at 2168 (Kavanaugh, J., concurring).

⁴ *Id.*

¹ *Nat’l Collegiate Athletic Ass’n v. Alston*, 141 S. Ct. 2141 (2021).

NIL and Collectives: The Title IX Question

NIL collectives seem to be all the rage, but questions remain as to whether they potentially trigger Title IX scrutiny.

By LEAD1 Association

Many LEAD1 athletics departments have embraced a collective approach to college athlete name, image, and likeness (NIL) opportunities whereby resources from businesses, boosters, fans, and donors are pooled together to create NIL opportunities for their college athletes.

Indiana has created the Hysteries NIL Collective; Texas the Clark Field Collective; South Carolina the Garnet Trust; Washington the Montlake Futures; Florida MarketPryce Florida; Oregon Division Street; West Virginia Country Roads Trust; Illinois Guardians and more. These collectives are typically promoted as unaffiliated with the university and led by alumni; making it easy for college athletes to monetize NIL; and in some cases, making it easier for brands to connect with these athletes; all while creating a competitive advantage for their universities. These collectives seem to be all the rage, but legal issues remain as to whether they are truly independent of institutions, potentially triggering Title IX scrutiny.

Title IX states that “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” How financial aid is distributed and avoiding giving assistance to outside groups that discriminate are two main issues under the federal statute. While many of the established NIL collectives are being described as unaffiliated with their university, any institutional assistance in their facilitation could trigger Title IX scrutiny.

Even minimal institutional involvement such as athletics departments allowing their facilities or donor mailing lists to be used to assist in the collective NIL efforts could constitute the type of assistance that would trigger Title IX scrutiny.

For that matter, even an institution’s compliance department vetting the formation of a collective could constitute institutional assistance. A collective, for example, is not a benefit that the institution is necessarily directly offering but its involvement in the vetting could be viewed as indirect involvement.

In that regard, even if the collectives are facially non-discriminatory (e.g., by their very description do not discriminate), if they are conducted, however, in a discriminatory manner, where benefits to both genders are not substantially equal, they could violate Title IX. So even if an institution is not discriminating, it can still be drawn into a Title IX violation by assisting an outside group, like a collective, that is.

Under Title IX, financial aid is equitably distributed when the actual expenditures given to men and women are substantially equal (e.g., within one percent disparity) to their participation in the athletic program. Thus, if an institution were to assist in the facilitation of a collective, even in a very minimal way, such as by sharing a donor or booster list with the collective, and if the aid distributed to male and female athletes from the collective were not substantially equal, Title IX could be violated.

Enforcement of Title IX with respect to these collectives could either occur in the form of an Office of Civil Rights (OCR) Complaint, which is the federal administrative office charged with enforcing Title IX. Or someone with standing, like an underrepresented college athlete, could bring a Title IX lawsuit against his or her university for monetary damages. With the Democrats in control of the White House, it is reasonably foreseeable that the OCR could be interested in investigating a Title IX violation, particularly with the backdrop of other administrative agencies like the National Labor Relations Board (NLRB) and the courts focused on college athletes’ rights. The most likely enforcement scenario, however, would be a lawsuit from an aggrieved college athlete against an institution for a violation of their Title IX rights.

So, for Title IX purposes, issues remain as to whether these collectives are truly independent of institutions or whether they are just an extension of them. The more involved an institution is – whether actually or perceived – the more careful institutions should be. In all cases, institutions would be well-served to conduct any vetting of a collective equitably – meaning it should use the same set of criteria in vetting no matter the collective and no matter the source for bringing the collective to their attention.

While millions and millions of dollars are being floated into these collectives, the college sports enterprise should not be surprised if a Title IX lawsuit eventually throws a monkey wrench into the status quo of these broader NIL arrangements. This issue is very tricky so even if your collective is unaffiliated with your institution, it would still be prudent to seek counsel on these legal issues presented. ■

Note that nothing in this written report shall constitute legal advice.

NCAA Infractions Questions Emerge as Institutions Push NIL Limits

By Holt Hackney

You could see it coming early last summer.

Due to legal complexities, the NCAA punted on creating a regulatory structure, or “bright-line” bylaws for NIL.

Without that structure, institutions could push the limits, and rightfully so, to gain a competitive advantage.

Now, however, the NCAA seems to be exploring these initiatives.

Some are suggesting it is, about time. A few months ago, University of Colorado Athletic Director Rick George suggested at a public luncheon that the NCAA was not “performing its role. To allow the NIL to get out of hand like it’s gotten is not acceptable and we as an industry have to embrace getting this back together, so we have some guidelines that are consistent across our industry. There’s some things out there that I’m disappointed in that some schools are doing because I think some of it falls under inducements.”

“It’s an area that really needs some governance nationally,” added George, who was one of 18 people originally named to an NCAA committee charged with exploring NIL legislation. “We were moving down the path to put up some really good guidelines for name, image and likeness, to protect from pay-for-play and all these other different areas, where we have inducements and those kinds of things.”

But legal developments and the free market overtook the committee. Now, FBS schools are left to grapple with the unpredictable scrutiny coming from the NCAA.

Some examples:

In one midwestern state, a men’s basketball player was suspended three games by the NCAA for selling “institutionally issued apparel and memorabilia” in June,

just before it became legal for athletes in that state to do so on July 1.

An FBS school in the Western United States was contacted by the NCAA, which had questions about an all-team NIL deal with a protein bar company. As part of the deal, scholarship players on the team were to receive \$1,000 each for representing the product. Meanwhile, walk-ons were to receive stipends covering cost of attendance. Kenneth L. Shropshire, professor and CEO of the Global Sport Institute at Arizona State University, suggested in the media that the concern may be related to scholarship limits for the football team. Allowing a sponsor to pay for the cost of attendance for walk-ons could constitute a violation.

Another professor, Thilo Kunkel, with the Sport Industry Research Center at Temple University, noted that schools may get sideways with the NCAA if athletes are collecting money from sponsors without providing a service, making the activity a pay-to-play issue.

“The payment is directly linked to a certain deliverable,” he said. “Oftentimes, these deliverables are social media posts. However, some of these athletes that are at these universities don’t even have a public Twitter or Instagram account. So that means that they’re getting paid for a deliverable that they essentially can’t fulfill as it currently stands.”

Another inflection point could center on how NIL opportunities are used.

“Where does a group deal cross the line from a permissible NIL deal to being some sort of improper recruiting inducement or pay for play,” asked Erin E. Butcher, a higher education attorney at Bricker & Eckler in Ohio.

“The NCAA may be interested in

whether this is going to give a school an advantage over other schools. Are people going to want to come to a school because they’re getting paid to participate when they could go to a different school and not have that deal?”

When asked whether schools should seek pre-approval before student athletes act on deals, according to Butcher, “I’m not even sure that the NCAA is offering, or would offer, any sort of ‘approval’ for these deals,” she said.

Instead, she is hoping for “clearer guide-rails on the types of deals that would run afoul of where the NCAA is planning to go for enforcement purposes. I think the onus is still squarely on the parties to the agreement and the schools.”

Colleges and universities may get that guidance in the coming year as Butcher envisions more scrutiny from the NCAA.

“This is its time to flex its proverbial rule-making muscle on NIL or let it go by the wayside. Given that we know that the NCAA has been poking around some NIL deals and the slow movement of Congress, the association will elect the former approach. How it will do it is another question.

“One camp desires clear guidelines, examples, and a compliance grace period. Another camp wants the NCAA to stay out of it entirely. Finding a middle ground will be tough. And, until that middle ground is struck (or Congress steps in), the question remains: where will the NCAA focus its enforcement efforts?” ■

LEGAL presented by Bricker & Eckler

Colleges Use FERPA as a Shield to Protect Disclosure of NIL Contracts

By Holt Hackney

The Family Educational Rights and Privacy Act, or FERPA, has become a controversial law in the NIL movement. It began over the summer when some news organizations made records requests for the contractual details associated with athlete NIL agreements.

The universities countered that to do so would violate the athletes' rights under FERPA. The news outlets challenged that strategy in court.

The trend continued in the fall. Gray Media, the parent company of six Louisiana TV stations, sued Louisiana State University and the *Athens Banner-Herald* filed a similar complaint against the University of Georgia Athletic Association. The court ruled against Gray Media; the Georgia case is pending.

"Access to open records is a vital element of our democracy," Athens Banner-Herald Executive Editor Caitlyn Stroh-Page told the media. "Ensuring the people of Athens-Clarke County and the state of Georgia have access to information owed to them is a core principle of journalism. We hope this action permits and fosters further transparency between our public entities and the citizens they serve."

Meanwhile, Andrew Bondarowicz, who teaches sports law at the Rutgers University Law School told the *LEAD1 NIL Institutional Report* that the cases will be "interesting" to follow, since "FERPA is meant to protect educational privacy. What is educational about a commercial deal?"

This area of tension was addressed in a 2016 article written in the *Sports Litigation Alert* by Robert Greim, Michael Hobbs, and Doug Swink of the University of Missouri — Kansas City.

"While some institutions have been found

guilty of and fined for violating FERPA (United States v. The Miami University, and The Ohio State University, 91 F.Supp.2d 1132)(2000)), others have prevailed against claims of privacy violations (Chicago Tribune Co. v. University of Illinois Bd. Of Trustees, 781 F.Supp.2d 672)(2011)," they wrote.

"In reality, the turning point in most

FERPA is meant to protect educational privacy. What is educational about a commercial deal?

**— Andrew Bondarowicz,
Rutgers Sports Law
Professor**

FERPA cases is whether or not the court considers the information in question to be of educational purpose. In *US v. Miami University*, the court determined that information on student disciplinary proceedings was not of an educational purpose and therefore not protected by FERPA (91 F.Supp.2d 1132) (2000)). Alternatively, in the *University of Illinois* case, admission records were determined to be of an educational purpose and therefore protected by FERPA provisions. (781 F.Supp.2d 672)(2011). The adverse impact to an institution's image from media coverage can be significant and can thus cause disagreement as how best to approach employee responsibilities surrounding student information (Kamenetz, 2015), regardless of legal outcome."

The authors noted that "FERPA cases can be difficult to resolve."

Jeff Knight, Of Counsel at Bricker & Eckler in the firm's Education Law, Pri-

vacancy and Data Protection, and Intellectual Property groups, views the debate over NIL contract details and FERPA as an important legal challenge.

When asked if FERPA is supposed to shield data related to NIL contracts, he told us that "supposed to" isn't really the right framing for the debate."

"FERPA certainly *could* apply to the records, or information contained therein. FERPA was created during a time where a student's education records existed in paper form, likely in an office. To put it simply, FERPA is old, and NIL is new."

Asked whether colleges and universities could have their student athletes grant permission to release the data, Knight noted that "any approach like that would need to reconcile with the fact that FERPA is federal law (and there are state law analogs that need to be considered, as well).

"Agree with it or not, schools would do well to ensure that they are not releasing data that could fairly be considered an 'education record,' without the prior express voluntary waiver of the student, subpoena, court order, or an applicable exception under FERPA."

Knight went on to forecast what he sees in the future, regarding FERPA and NIL activities, characterizing any prognostication as blurry.

"It will be litigated. I wouldn't be surprised to see the courts reach a number of different conclusions."

And if some of those rulings favor the news organizations, the public disclosure of data may go a long way toward "establishing the fair market value of certain services."

"But overall, it will likely mean more to members of the media than to other groups." ■

Can International College Athletes Monetize Their NILs? It's Complicated

By Katie Lever, M.A.

Although the name, image, and likeness era is here to stay, there's still one group of college athletes missing out on opportunities to monetize their NILs, build their personal brands, and make lasting business connections: international college athletes.

Due to U.S. visa laws, ICAs who are F-1 visa holders (which is the vast majority of ICAs) cannot work, period, except for **in extremely limited circumstances**. If ICAs, or international students more broadly, are caught working illegally, they can be deported or risk jeopardizing their green card status later down the road. Unfortunately for them, legal work opportunities can be hard to come by, as ICAs can only work on campus in a direct service provider role to other students, off campus for special cases of economic hardship, and in jobs that are tied to their specific fields of study.

That means many NIL-related opportunities, like signing autographs, or becoming a social media influencer, are not permitted under current student visa laws.

This situation is personal for athletics workers like Sherman Neal II, who serves as the Strategic Initiatives Coordinator at Washington State University, which he says has a uniquely high rate of international athlete representation. "It's definitely a social justice issue because it's this inequity in real time," Neal said. "When I present on NIL, I am telling 35 to 40% of the people in the room, potentially, that there are disenfranchised, even though they're putting in the same work."

To complicate matters further, unlike the legal battle for NIL that's heated up over the last several years, NIL policy reform for ICAs won't go through the NCAA or even state legislatures—visa laws operate at the

federal level, so reform in this area is more complex and unlikely to happen any time soon. However, there are still **some NIL opportunities** available to ICAs as well as ways that athletic departments can get involved in educating and helping them.

First, according to Kameron Cox, director for the University of Illinois **INFLUENCE program**, international athletes may be able to agree to NIL deals that are "home facing, or prepare activities that are focused on the American market but consummate those things back home." However, the business activity cannot take place in the United States. So if an international athlete has business connections in their home country, that athlete can reach out while in the U.S. as long as goods, services, and currency are not exchanged until the athlete returns home. "It seems that you can neither create nor post content in America," Cox added. "It's really, really difficult."

Cox has confirmed with immigration attorneys that this also applies to American companies—if, say, a track athlete from France wants to promote a restaurant in her American college town, she can contact the restaurant while she is in the U.S. as long as the promotional activity takes place in France. International athletes hoping to go this route should start reaching out to companies towards the ends of semesters when athletes are planning on visiting home because marketing windows for NIL activities tend to be short and the competition with domestic athletes, who don't have to jump through such hoops, can be steep.

"If the student-athlete doesn't have a trip home planned during that window, a business is likely to look to an American student-athlete instead of waiting the few months for the international student-athlete to go back home and complete the work,"

Cox explained in an email.

Jon Velie, an immigration attorney and lead counsel of Velie Law Firm, added that athletic departments can structure on-campus employment in ways that would "allow NIL, if the students are being paid in a company that's located on the university property that provides services to students." Off-campus jobs tied to areas of study can also follow this logic. "If you structure [NIL] in the regulations that currently exist," Velie said, "a foreign student could get money while attending the university and not be in violation of their F-1 visa status."

Velie emphasized that initiatives like these aren't guaranteed to work, as international student work approval is complicated. But if employers of international students are willing to get creative, they could open up opportunities for college athletes to reap the benefits of their NILs. And, in the same way that state pressure eventually led the NCAA to amend its NIL policies (and put other issues that affect college athletes on the congressional map), these kinds of efforts could bring awareness to federal lawmakers and the Department of Homeland Security.

"It's an interesting thing," he said, "and somebody's going to have to make a chance shot on it."

For athletics workers who feel overwhelmed by the NIL landscape, possibly the best thing they can do is educate themselves, especially when navigating U.S. visa laws as well. "Call immigration attorneys in, and look at the regulations," Velie advised. "Don't just follow what another university does. Get real legal advice." ■

Katie Lever is currently a doctoral candidate at the University of Texas in Austin's Moody College of Communication, where she studies NCAA discourse in the field of rhetoric and language.

LEGAL presented by Bricker & Eckler

NIL at 6 Months—What NCAA Member Schools Should Know and Do For and On Behalf of Their Athletes

By C. Peter Goplerud, Dean, Florida Coastal School of Law

July 1, 2021 was the dawning of the Name, Image and Likeness (NIL) era in collegiate athletics. As has been well chronicled, California enacted the first law granting NIL rights to collegiate athletes with an effective date of July 1, 2021, and prior to that date several states enacted similar legislation. Following months of institutional indecision, on June 30, 2021, the NCAA Board of Governors unanimously agreed it was time to address its stance regarding NIL. It announced a waiver of the rules that prevented athletes from exercising their NIL rights. No further regulatory action has been taken by the NCAA, other than to continue to ask for help from Congress.

There are now 20 states that have NIL laws in effect. Another 5 states have bills that have been signed into law with effective dates between now and 2023. Several other states considered legislation, but they did not succeed in passing NIL bills. Finally, there are numerous bills pending before both houses of Congress.

Now, nearly six months later, what lessons have been learned for which colleges and university officials should respond.

It is essential for every NCAA member institution, regardless of whether it is a Power 5 school or a Division III school, to develop and properly administer a process for educating, mentoring and protecting its athletes. A crucial aspect of the process should be a program for compliance with both applicable state law (if any) and NCAA policies and regulations, such as they are at the moment. It is worth considering whether to engage an outside entity to provide compliance support. As part of

the compliance effort, among other things, schools should have a disclosure form that the athletes must complete for any NIL deals obtained, regardless of whether your state law requires disclosure. It will also be important for schools to decide what limitations they want to put in place regarding NIL contracts. Do they want to prohibit contracts that conflict with existing athletic department contracts? Do they want to prohibit contracts involving alcohol, marijuana, gambling and other controversial products or activities?

Schools should include as part of their process and policies an educational and mentoring component. Such a program must include a financial literacy course, either for academic credit or simply the edification of the athlete. I would encourage schools to provide advice and counsel to the athletes regarding dealing with agents and attorneys in the NIL sector. It will also be important to provide them with advice and information regarding contract structure and provisions essential to protect their rights and interests in NIL deals. They must be reminded that the NCAA, and some state laws, preclude “pay for play” time arrangements. At the moment it is not entirely clear how the NCAA will interpret this prohibition, although it has announced it is investigating at least two schools where entire cohorts of a team or teams have been given NIL deals for simply being on scholarship or on a team. There should be concern for any contract that proposes to include a penalty for “under-performance.” Some vendors or sponsors may be tempted to insert such clauses in light of the experiences of Spencer Rattler and Quinn Ewers, two high profile college quarterbacks who received high dollar NIL

deals and then lost the starting position in Rattler’s case or was buried in the depth chart in Ewers’ case. Both entered the transfer portal and are likely to have forfeited some aspects of their contracts. It is unclear whether clauses limiting compensation or nullifying a contract where an athlete underperforms, enters the transfer portal or is injured, would cause the contract to be interpreted as a pay for play deal. The language of such clauses will have to be skillfully crafted to protect the athlete, both under the contract and for NCAA compliance purposes.

Schools should also mentor the athletes regarding the length of contracts. One particular consideration is how long the entity providing compensation is able to use video associated with the contract. Care should be used regarding exclusivity language as well. Part of the education provided to the athletes should be tutorials on branding, particularly related to social media.

Schools should be encouraged to develop an athlete friendly policy regarding the use of school logos, colors and uniforms in the context of NIL contracts. Ultimately, so long as the school branding items are used tastefully and appropriately, the schools will benefit. The same should go for the use of athletic department facilities for production of NIL related videos or advertisements. And, while a number of schools have put together group licensing programs for their athletes, partnering with the athletes in deals is likely to present problems with the NCAA and put the schools in a complicated relationship with the athletes.

While the most publicized deals thus
See NIL AT 6 MONTHS on Page 16

Catching Up with Universities on NIL Communications

By John Acunto, Senior Partner of Consumer, Lifestyle & Sports Practice at FINN Partners



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Ok, I think we all know Name, Image and Likeness (NIL) is huge, but not sure we were expecting Tom Brady to join the NIL scene.

Recently, the Tampa Bay Buccaneers quarterback partnered with nine college athletes including Michigan quarterback Cade McNamara, Jackson State quarterback Shedeur Sanders, and Georgia wide receiver George Pickens, to help promote his new clothing line “Brady” that debuted earlier this month.

Everyone is jumping into NIL.

And colleges, both big and small, are still trying to figure everything out as new NIL deals continue to happen, and student-athletes continue to cash in. It certainly has not been easy.

Over the last few weeks, I was fortunate enough to receive some great insight on NIL directly from two professionals that are entrenched in the day-to-day of college sports: Kevin Klintworth, Oklahoma State University Senior Associate Athletic Director; and Markus Jennings, Akron University Deputy Director of Athletics and Chief Operating Officer.

Each offer a unique perspective on NIL, with OSU participating in the BIG 12 and Akron in the Mid-American Conference (MAC) and how they have handled

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communications.

Here are their thoughts on NIL and impact it has had at their respective university.

What has been your school’s approach to NIL from a communications standpoint?

Klintworth: We have attacked communications issues from various angles, ranging from team and individual in-person meetings, to group sessions, to electronic communications and through our head coaches.

Jennings: The University of Akron Department of Athletics has partnered with a third party NIL platform to assist our student-athletes with all NIL related topics. Our approach to communication is to inform our head coaches monthly of this service and communicate with our student-athletes as much as possible.

Have you made any NIL related announcements or looked to publicize? Are you actively seeking media opportunities to tell your story in the NIL space?

Klintworth: We have made a conscious decision not to seek publicity and instead have focused our PR efforts on our internal communications with our current students and with our head coaches.

Jennings: We have not made any public announcements outside of posting an article on our website and only looked to publicize with our student-athletes and campus community.

Have you tried to provide student athletes with proper resources to educate them on NIL? If so, how has that been received?

Klintworth: This question strikes at the heart of our gameplan to this point. We have student-athletes who are naturally good at NIL and some who should be but aren’t. And nearly all of them are new to the financial side of things, including taxes. We

have partnered with the Spears School of Business on campus, which includes something called the Brand Squad, that teams our student-athletes with the university’s best and brightest marketing students, who also assist with financial questions. Word of mouth within our student-athlete community has been as effective as any formal outreach we have initiated.

Jennings: Yes, we have, and as a result of this, we have secured the partnership with the third party platform. We feel it’s been well received. It was important for the University to do this to simply show that we care and that we are here to support the student-athletes in whatever capacity we can.

How has NIL changed your day-to-day role, if at all?

Klintworth: Certainly, since July 1, and probably six months prior to that, NIL has become a huge topic of conversation. It has resulted in several additional meetings per week. Our NIL meetings, which at one point included three meetings per week, include everyone from compliance, legal counsel, social media, communications, and coaching staffs to the athletic director and often times campus officials. We have stumbled into several game-day issues regarding NIL and of course, we talk about recruiting. What is allowed? What isn’t allowed? How does school X get away with this and school Y get away with that?

Jennings: Not much at all. Thus far, we have not had many student-athletes at our institution take advantage of the NIL opportunity. That may change as we move along in this process but as of now, as an administration we are trying to keep our student-athletes educated on this topic as much as possible.

See **CATCHING UP** on Page 15

SPORTS BETTING presented by Entain

Changing Landscape of Collegiate Sports Goes Beyond NIL; Includes Sports Betting

By Martin Lycka Senior Vice President, American Regulatory Affairs & Responsible Gambling, Entain plc



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This year's FBS schedule on New Year's weekend provided its share of thrills, surprises and great story lines leading up to the collegiate national championship game a week later. Amid the celebrations—and disappointments—most dedicated fans probably never thought of the fundamental changes sweeping through college football.

Last summer's NCAA policy change that allowed collegiate players to benefit from their Name, Image and Likeness (NIL) is considered a fundamental change in collegiate sports. On one of the FBS telecasts, a network announcer commended a quarterback not only for his play on the field, but for his ability to “handle,” or navigate successfully the new NIL landscape.

The broadcaster didn't get into details but presumably the quarterback is looking to capitalize on his accomplishments and celebrity.

Of course, NIL benefits are not only for FBS athletes. One of the first collegiate athletes to ink a NIL deal was a softball player from a smaller university who signed for paid promotional work with a minor league baseball team. Her athletic director proudly pointed to her on-field and classroom accomplishments. At the same time,

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he acknowledged the challenges college athletes and AD's face in learning the new NIL framework.

Significant as the NIL changes are, they are not the only changes sweeping collegiate—and professional—sports. The other major change affecting American sports everywhere is the U.S. Supreme Court's 2018 decision, which overturned the Professional and Amateur Sports Protection Act (PASPA), as unconstitutional.

PASPA was a 1992 federal statute that prohibited offering state-sponsored sports betting. The landmark court decision upheld a 2014 New Jersey state law that permitted casinos and racetracks to offer sports betting within state lines, and for other states to do likewise.

Now, within less than four years, sports betting has become a major, multi-billion-dollar market in the U.S. and significant growth is projected in the years ahead. Indeed, just a few months ago, Entain estimated the U.S. market—where Entain operates via BetMGM, a joint venture with MGM Resorts—could be worth more than \$32 billion in the long term.

With the heavy advertising for sports books in many U.S. states, a casual observer might believe that the sports betting market is mainly about armchair fans placing their bets on their favorite pro team or on certain aspects within a game. That's correct but in reality, there are sub-categories of that mass audience that deserve special attention. One such category is collegiate athletes.

Why? Years of research, from Harvard Medical School's Faculty on Addiction and other universities, and from leading authorities in Europe, shows that athletes are more likely to gamble—and are at greater risk of problem gambling—than the population as a whole.

Perhaps that's not surprising, considering the time, talent, expertise and dedication that athletes apply to their sports for years. After all, athletes, coaches and staff know and track much more than won/loss records. They know matchups, opponents' strengths and weaknesses, tendencies and countless nuances that help them compete successfully.

That's the same information and familiarity that gamblers value and use. It gives athletes an advantage when projecting risks and outcomes, using information that they analyze every day and before every game.

The global sports betting industry, including Entain, recognizes that such focus and familiarity also presents risks, especially at a young age. Operators want their customers to enjoy sports in a unique and personal way; we also want customers to play it safe, and not to bet beyond their means.

Entain is a global leader in player protection, using its cutting-edge technology to pioneer a more proactive and personalized approach. Our initiative called Advanced Responsibility and Care (ARC), utilizes customer patterns, behavioral science and state-of-the-art algorithms and artificial intelligence, to help identify players potentially at risk of problems, and to intervene electronically, or personally, if they're heading in the wrong direction.

The good news is that first trials of ARC, during the second half of 2021 in the UK, showed positive outcomes in more than 90 percent of cases where players identified as showing signs of problems moved out of risk, following customized interventions.

We know that the long-term health of our business depends on trust and a posi-
See CHANGING LANDSCAPE on Page 17

LEAD1 Highlights Latest Trends on Intersection Between Sports Wagering and NIL

College Athletes and athletics departments are starting to enter into NIL and other broader agreements with sports betting entities.

By *LEAD1 Association*

As Entain underscored in its piece for this issue of the *LEAD1 NIL Institutional Report*, legalized sports betting in America is alive and well. Our athletics departments are now faced with many risks associated with sports gambling. After all, the sports betting scandals involving athletes in the United States during the past quarter century have all occurred at the college level. The intersection between sports betting and NIL on college campuses is novel, and while these developments provide significant revenue opportunities for both universities and college athletes, one thing we know is that a sports betting scandal at a university would be catastrophic.

In that light, the purpose of this piece is to update our members on some of the latest trends as it relates to the intersection between sports wagering and NIL, as well as to refer our members back to a white paper providing actionable recommendations in compliance that we published after the Professional and Amateur Sports Protection Act (PASPA) was repealed. See that piece here: <http://lead1association.com/wp-content/uploads/2020/12/White-Paper-Sports-Betting.pdf>.

It is not surprising that colleges athletes are now starting to enter into NIL agreements with sports wagering entities. Northwest Quest Resort & Casino, for example, recently signed Gonzaga men's basketball forward Drew Timme to an NIL agreement.

While most state NIL laws and institutional policies on NIL prohibit college athlete NIL deals with sports betting entities, some states and institutions allow for this, including in Colorado. In fact, MaximBet, an authorized gaming operator, recently offered NIL contracts to every female college athlete in the state of Colorado over the age of 21. Of course, some states are starting to repeal their NIL laws given that the NCAA passed looser regulations on the topic so there could be more of these deals to come.

It is also worth mentioning that athletics departments have started to enter into department-wide sponsorship agreements with sports betting operators, for example, LSU and Maryland have already signed these types of deals. LSU agreed to a partnership with Caesars and Maryland with PointsBet. In both cases, the sports betting entities receive advertising opportunities around the schools' sporting venues along with a presence across their digital properties.

So, with college athletes and athletics departments entering into NIL and broader agreements with sports betting entities, coupled with boosters and other third parties having more freedom to participate in college sports with NIL, there are new pressures on college athletes related to sports betting. It is, therefore, incumbent upon the college sports enterprise to educate college athletes and other relevant stakeholders about sports wagering and its possible unintended effects.

As we stated in our white paper, college sports must continue to closely monitor sports wagering for possible illicit activity and collaborate with states to help protect the well-being of college athletes as well as the integrity of sport. It is also critical that college sports take the necessary steps to protect the dissemination of college athlete injuries or playing status, which need to be balanced with college athlete privacy expectations and interests. ■

Note that nothing in this written report shall constitute legal advice.

Catching Up with Universities on NIL Communications

Continued From Page 13

As NIL continues to reshape college sports, there are no right or wrong answers, and schools across the nation have taken different approaches to communications.

One thing, however, is certain. Many universities are putting communications with their student-athletes front and center. Providing education and resources to help them navigate through this unprecedented time in college sports.

And that's a good thing. ■

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NIL, the Transfer Portal, and NCAA Absenteeism: A 3-Headed Monster

Continued From Page 7

preme Court observer not to read much into how concurring opinions are vetted, but it's at least in the realm of possibility that Justice Kavanaugh is further down the road than his peers on NCAA governance matters.

Why revisit *Alston* now? Because it should serve as a reminder that, while wounded, the long-arm of the NCAA is still very much intact. And baiting the NCAA into an investigation surrounding a proposed NIL deal remains unwise. No matter how confident one is that a deal is sound.

To that end, it's tempting to get lulled into thinking that the NCAA's enforcement arm wouldn't dare open an investigation into the wide-open spaces of NIL – certainly not with a crater-sized hole where the association's NIL rules should be – but such thinking could quickly lead to a host of worry.

While we haven't seen any public infractions decisions with respect to NIL as of now, it doesn't take much to understand

what one could look like. Plus, you don't have to look far to observe the havoc an NCAA investigation has on a program. And, with prominent NIL-supporters all but daring the NCAA to involve itself, it won't be long before we have something concrete to refer to.

Until then, institutions would be wise to remember that Bylaw 13 is alive and well, and it generally prohibits institutional staff members, and representatives of its athletics interests, from being directly or indirectly involved in arranging or providing benefits to a prospective student-athlete that are not otherwise available to prospective students generally. Similarly, Bylaw 11, which presumes that your head coach is responsible for the actions of their direct-direct reports, is also fully functional. So, while it may be desirable to discuss with recruits just how much success the team has had with NIL, it's important that everyone involved in recruiting understand the permissible contours of those conversations.

The reason why, of course, is because it's the institution that bears the brunt of infractions. Not only is drawing the NCAA's ire a public relations nightmare but infractions also cause tangible harm: penalties, including probation, show-cause orders, public censure, monitoring, and disclosures, along with fines, possible vacation of program or individual records, and recruiting restrictions, are possibilities – even in a post-*Alston* world.

You can help stave off this three-headed monster by ensuring that your internal and external athletics stakeholders are well-versed in the boundaries of your NIL policy (which, in turn, should be based on applicable state laws or executive orders). Showing the success that your student-athletes have had in the NIL space is laudable, but be cautious in not touting that success as some sort of inducement to play.

The NCAA may have lost some of its bite, but it'll still hurt. ■

NIL at 6 Months—What NCAA Member Schools Should Know and Do

Continued From Page 12

far have been six figure and reported seven figure deals, primarily for men, the vast majority of the deals are small dollar. Indeed, the reported average NIL deal is only slightly more than \$1,000 for Division I athletes. It is significantly less for Division II and III athletes. Schools should, through their education programs, counsel athletes to look for non-glitzy opportunities, such as endorsements for local businesses and doing clinics for local middle and high school athletes.

Finally, there are two federal regulatory considerations for schools. They must be

vigilant, and even pro-active, with Title IX compliance. They should actively promote opportunities for women and guard against actions that discriminate against women. Unaudited data, indicates a significant majority of current deals are for men, although nearly a quarter of the Division I deals have gone to women basketball athletes. They should conduct careful review of deals coming from boosters, to ensure compliance with both Title IX and NCAA guidelines. Schools should provide similar support and protection of the rights of international athletes. On the surface of the NCAA policy and the

various state laws, international athletes are able to exercise their NIL rights. However, federal immigration law allows international students to work on campus, but does not appear to allow them to receive compensation from other sources such as NIL contracts. There are efforts underway to change that policy, but for now schools are advised to fully inform their international athletes regarding the prohibition.

Many of these issues will evolve and answers provided in 2022. There will undoubtedly be new issues that will appear. Vigilance and diligence are required. ■

Changing Landscape of Collegiate Sports Includes Sports Betting

Continued From Page 14

tive customer experience. But education and awareness, as well as providing support for the tiny minority who do have gambling issues, is also extremely important.

We know we can't do all this alone and we work with a broad range of partners in player protection. They include EPIC Risk Management, RG24/7, Kindbridge and Rise Above the Disorder, all professional organizations dedicated to preventing and addressing problem gambling. On-campus partners already include such programs as Harvard, the Universities of Utah and Oregon, and the University of Nevada—Las Vegas and many more. And the list keeps growing.

More than 50 collegiate sports teams, coaches and staff, leagues, conferences and pro franchises share our goal to keep sports betting safe and enjoyable, especially among athletic experts. More partners will be announced soon; perhaps your university will be among them.

These partners provide more than name recognition and approval. They

provide their own credible endorsement of player protection and work with the top consultants in the world to deliver awareness and training for athletes across the sports spectrum.

EPIC Risk Management is the leading consultant that provides on-campus training to collegiate athletes, coaches and staff. EPIC's focus is on harm prevention programs and many of their staff have had firsthand experience with problem gambling. They know it because they've lived it.

Through research, experience, training, seminars and dialog, EPIC's experts provide unique insights to help athletes remain safe from gambling-related harm.

It's not a one-shot effort, not a "Hail Mary" pass to the end zone as time runs out. Like all winning strategies, gaining the "W" depends on focus, preparation, consistency and long-term dedication. There's no question that collegiate sports have the talent and ability to win this game and to keep problem gambling on

the sidelines.

We're committed to being the most responsible operator across all of our brands and markets, and doing all we can to help prevent and address problem gambling. This also means raising awareness among all those who enjoy having a bet, including collegiate athletes.

It takes a team effort and it's the right thing to do. Like any gridiron contest, the most successful teams will anticipate and plan for the risks, the matchups, the strengths and weaknesses. And the victories will last far beyond the final whistle. ■

Martin Lycka is Senior Vice President for American Regulatory Affairs & Responsible Gambling at Entain, a leading global sports betting, gaming and interactive entertainment group which operates in the U.S. through BetMGM, jointly owned with MGM Resorts International.

Reflections and Looking Forward to NIL in 2022

Continued From Page 4

increasing volume of disclosures. If institutions empower student athletes with defined educational requirements, NIL programs will evolve from deal sourcing and collectives to the holistic development of student-athletes.

- While schools may be reluctant to stringently enforce disclosures, having accurate data on disclosures will only benefit coaches on the recruiting front.
- Camp season is approaching and schools should have well defined facility rental policies in place for student athletes who wish to use institutional facilities, as this could be a significant revenue stream for institutions.
- Schools should have policies for the

use of registered marks as an additional revenue stream and risk management measure.

- Athletic departments should be engaging with legal counsel to ensure that the university is protected from any potential liability associated with student athlete NIL opportunities.

2022 PREDICTIONS

- Due to NIL income; there is a possibility for student athletes to lose their Pell grants or will be ineligible to receive the same amount of financial aid they received in 2020/2021 due to their NIL earnings.
- Student athlete participation will

continue to increase QoQ as more student athletes become aware of and comfortable with the NIL regulations at their institutions.

- The median deal value at non-P5 schools will increase month over month as these departments focus on how to give student-athletes the skills needed to successfully build a business and become an entrepreneur.

In review, the future of NIL is as unpredictable as ever. However, our team looks forward to guiding institutions and athletic departments through a strategic implementation of technology and software throughout 2022. ■

Level-Setting NIL Expectations with Data, Objectivity and Patience

Continued From Page 5

is to come in 2022 and beyond.

Every day, because of NIL, more student-athletes are truly thinking of themselves as “more than an athlete”—a phrase LeBron made famous by living it out and now younger student-athletes are going to benefit from using sports to set the stage for the rest of their lives.

I continue to enjoy those student-athletes who push their brand on social media by posting “outside the lines” content. They are showing who they are as philanthropists, entrepreneurs, passionate musicians, dancers and other interests and industries that they are connecting with outside of the game they play. They are telling the story of their team and their journey as a student-athlete.

They are tapping into monetary opportunities with fans, brands and others who

truly see their value as an athlete, and more importantly, as a human being.

Let’s focus on that, and not just the headline-grabbing deals. Opportunities will grow across the board because businesses are learning that NIL is real across every state, and they can see that these student-athletes have engaged audiences they will want to engage with through micro-influencer campaigns.

But let’s keep it all in perspective.

Student-Athletes — you and your college athletics program can win in NIL even if you are not making big NIL money, or even if you choose not to pursue NIL at all.

Coaches — you will win in NIL even if not all your student-athletes are getting deals.

College Athletic Departments — you

can win in NIL even if only a handful of your athletes get NIL deals, particularly in the early stages of a nascent industry.

The important thing is that we—as a collective industry—continue to support student-athletes who want to put in the work to build their NIL business, and that the coaches and universities can show how they empower those pursuits in the context of higher education. As you engage student-athletes more with these resources and their peers experience financial success, more of them will apply the behaviors that they’re learning into tangible, personal NIL business success.

Like everything in life, you get out of it what you put into it, and we’re in the first leg of a long race. ■