



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

AUGUST-SEPTEMBER 2021

"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 second issue of the LEAD1 NIL Institutional Report. Since our first issue in mid-June, seismic changes have occurred in college sports after the Alston Supreme Court ruling and the NCAA's decision to allow institutions great discretion to implement their own NIL policies.

Here in Washington, on the NIL legislative front, nothing seems imminent as the NCAA's interim NIL policy has taken some pressure off the Congress to act, and the Congress is busy finalizing the infrastructure bill and will soon focus their attention on voting rights. While the Senate Commerce Committee would like to get a national NIL deal done, since NIL has been effective, no real crisis has occurred that would give impetus for the Congress to act soon. For a deal to get done, the House would also need to host some hearings on the issues, which could take several months.

So, in the short-term, while nothing is likely to happen congressionally, it is possible that the Congress could revisit college sports issues in the future, especially after the Alston decision, which will likely create greater stratification between the resource rich and resource challenged schools. To my surprise, to this point, not much about Alston has been discussed at the conference level, and college sports is seemingly operating in an enforcement free zone, which could create future issues that would galvanize the Congress to act.

The most direct comparison to our current landscape is the NCAA's former policy of home rule, established by the association in its earliest years, which essentially allowed each member institution to be its own boss. That reality eventually led to the need for national standards, which resulted in the NCAA's Sanity Code to establish some



Tom McMillen, President and Chief Executive Officer of LEAD1 Association

rules for uniformity in college sports. In that vein, the last time the Congress truly addressed sports issues was in the aftermath of the 1972 Olympics, which I participated in, leading to the passing of the Amateur Sports Act of 1978.

As for the present, the future of college sports is under significant review with the NCAA's announcement of its Constitutional Convention later this year. Some of the core issues are whether the NCAA can reassert some central authority in critical areas that have been recently deferred to the conferences, and whether college sports will be able to produce fair and equitable championships for more than a handful of schools to be able to compete.

As for LEAD1, we are actively examining what transformation in college sports could look like as we have created a future of col-

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TECHNOLOGY presented by Spry

NIL, Technology and Managing Athletic Department Needs

By Lyle Adams, CEO of Spry



SPONSORED CONTENT

By Lyle Adams, CEO of Spry

The opportunity for student-athletes to capitalize on their Name, Image and Likeness kicked off over 50 days ago; institutional NIL policies continue to evolve and administrators and compliance departments continue to learn more about the constantly changing NIL environment. With student-athletes returning to campus for preseason and the start of fall classes, it's a busy and turbulent time in collegiate athletics. Spry has had the unique opportunity to speak with administrators from athletic departments of all sizes about their areas of success and concern.

The challenges and concerns are similar across most athletic departments, despite the size of the athletic department or the number of student-athletes on campus.

- Will the return of practices and games create a network effect in regards to NIL engagement?
- Will the demand in the local community exponentially increase if our football team starts the season undefeated?
- Will the current volume of disclosures stay consistent or increase as the fall season begins?

Some institutions are cautiously optimistic that they will be able to handle a potential spike in volume, while others are concerned about the locker room/team dynamic. Ultimately, we believe that technology and the

Contact Lyle at lyle@spry.so

use of technology can mitigate many of the concerns athletic departments have about NIL while empowering student-athletes to be their own best advocate.

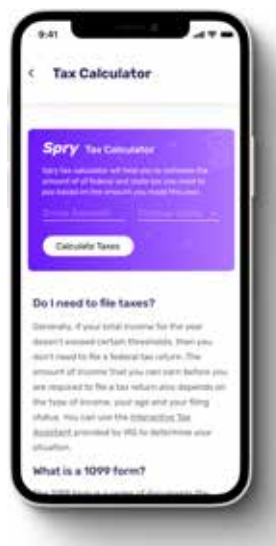
All collegiate administrators share the ultimate goal of protecting student-athletes while giving them the best opportunity to benefit from the NIL rule change. However, the last 50 days this has been a learning experience for everyone.

We've heard the following from athletic departments in the last month.

- Most deals are being offered through social media DMs and student-athletes are not signing contracts
- Administrators need the ability to request more information about a disclosure opportunity before rejecting or approving a disclosure. *Pictures, Contracts, PDFs, etc.*
- Student-athletes want an easy disclosure process and the more complicated the process, the less likely the student-athlete is to engage

NIL is in its 'infancy' and our understanding of NIL and all its moving parts will continually evolve as we all learn more. With that said, administrators should communicate frequently (weekly) with their NIL vendors and partners so that everyone is constantly pushing to provide the best systems for student-athletes.

Based on the feedback mentioned above, it is easy to see that internal and external communication continue to be the most important aspects of NIL. Whether it is between athletic departments and student-athletes or student-athletes and potential partners;



everyone wants access to the athletic and compliance administrators and a quick response time. Smart technology can streamline the communication process by addressing some of the other concerns listed above. By incorporating simple features and products to upload documents and easily **re-submit** disclosures, student-athletes are able to address questions as they arise from senior leadership without stopping by the office or jumping on

the phone.

In the past month, Spry has built out several new product features to improve the internal review process for our partners. Users can request changes and leave comments on disclosures allowing for even further streamlined communication. Additionally, we have added details to the email notifications that student-athletes receive when submitting a disclosure. Hopefully, this will allow athletes to track the approval process more easily within the Spry app. Updates include:

- request change on disclosures
- leave comments on disclosures
- attach documents to disclosures
- email notifications when a student athlete submits a disclosure / leaves a comment
- NIL on demand disclosure type

The continued release of upgraded technology is part of our plan as we pivot and adjust to the feedback from our clients.

Ultimately every institution and athletic department will have their challenges and issues with NIL, but technology should not be one of them. ■

NIL: The Ball Is in Your Court – What Will You Do With It?

Prepared by LEAD1 Association

Note that nothing in this article shall constitute legal advice.

With institutions now expected to develop their own rules about student-athlete name, image, and likeness (NIL) activities within the parameters of the NCAA's interim NIL policy, the ball has been thrown into the court of member institutions.

Under the NCAA's interim policy, state NIL laws take precedence over NCAA rules. In states without NIL laws, each school is expected to make its own NIL policy subject to NCAA guardrails pertaining to pay for play, impermissible offers and inducements or extra benefits. Institutions will need to create their own policies related to disclosure, conflicts with institutional agreements and values, as well as use of institutional marks. The issue of disclosure is particularly interesting given that non student-athletes are not required to disclose their NIL agreements, and states vary as to the timing, transparency, and threshold for disclosure.

In that vein, LEAD1 recently hosted a panel featuring Maggie McKinley, Deputy Athletic Director at the University of Cincinnati, Andrew Donovan, former Associate AD for Regulatory Affairs at the University of Tennessee, and Kendall Spencer, former student-athlete at the University of New Mexico, and NCAA Board Member. Here are some of the important takeaways.

1. **Use of institutional marks.** Most states that have passed NIL bills leave use of school intellectual property to the institution. In that regard, McKinley and Donovan's states, Ohio, and Tennessee, have NIL laws that state such. At both schools, student-athletes

must obtain permission from the schools to use institutional marks in NIL agreements. Cincinnati has a licensing department on campus, while Tennessee has assigned this role to a senior administrator in athletics. Initially, according to McKinley, schools may not be as harsh on student-athletes for improper use of marks, and are, rather, focusing more on education. According to Spencer, from an institutional standpoint, "being organized is the most important thing," as issues could arise in the future where third parties, not just student-athletes, improperly use marks.

2. **Disclosure of NIL agreements.** Most states that have passed NIL bills mandate that student-athletes disclose NIL contracts to the institution in a manner the institution implements. Note that the NCAA interim policy is silent on disclosure, but states that individuals should report NIL activities consistent with state law and/or institutional requirements, if applicable. States also vary as to disclosure rules, including on timing. According to Spencer, being overly restrictive on disclosure, such as requiring too much disclosure, could subject institutions to liability. If an NIL contract, for example, is illegitimate, and the school had enough information to know about it, schools could be found liable. Thus, "bare minimum," disclosure is a "good place to start," said Spencer. According to McKinley, Cincinnati requires disclosure after the NIL contract is signed, but does not have a "day's" requirement. In addition, disclosure could be helpful for determining fair market

value and creating a "knowledge base" of case studies for student-athletes to learn from. Creating an overly restrictive disclosure policy could also put student-athletes at risk from an eligibility standpoint. According to Spencer, obtaining written contacts might be a good best practice used for educational purposes down the road, but that ultimately, it is best to follow state law from a liability standpoint. All in all, as we get deeper into NIL, education is critical. "You are now the CEO of your own business," said Donovan.

3. **Conflicts between sponsors.** States also vary on handling conflicts between sponsors. Some states leave it up to the institution, while others explicitly state that NIL deals cannot violate team contracts. The biggest issue is how institutional policies are being used in recruiting, according to Donovan. Of course, schools that place more restrictions on NIL opportunities will have to explain these policies to recruits. Some NIL agreements could be considered "pay for play" or "improper inducements," which makes every NIL contract fact determinative, such as whether a quid pro quo relationship exists. Education, and understanding what other schools are doing, can mitigate potential eligibility issues. Some student-athletes might even decide to skip media appearances, unless paid.

Ultimately, all schools are learning as we go. But the most important takeaways are educating, and communicating with all stakeholders, including student-athletes, coaches, and boosters. ■

The Color Scheme Question – Student-Athlete Use of School Color Schemes Without Permission?

Prepared by LEAD1 Association

Note that nothing in this article shall constitute legal advice.

As institutions implement their own NIL policies depending upon their state law and within the parameters of the NCAA interim policy, one of the essential decisions that athletics departments should make is whether to allow use of their intellectual property, such as use of trade name, color schemes, and logos, by student-athletes.

In general, many athletics departments have instituted policies that require student-athletes to first obtain permission, or enter into a licensing agreement, when potentially using their schools' marks for NIL activities. But, even with explicit institutional NIL policies, there remain some ambiguous issues, such as whether a student-athlete may be infringing upon a school's intellectual property simply by their appearance. One

of those specific issues is whether a student-athlete may wear the color scheme of their school without permission.

Fortunately, for college sports, in 1995, the Supreme Court of the United States addressed this question in *Qualitex Co. v. Jacobson Products*, which involved a company using a very similar and special shade of green-gold for selling press pads subsequent to a company that had already been using that color for the same purpose. The essential issue in the case was whether the Trademark Act of 1946 (Lanham Act), permits the registration of a trademark that consists purely of color. The Court held that, sometimes, a color will meet ordinary legal trademark requirements. In other words, trademark law includes color within the universe of things that can qualify as a trademark. In its reasoning, the Court stated that colors may develop "secondary meaning," to the point where

customers may come to treat a particular color as "signifying a brand" and "indicating a product's origin."

To this point, while we have not seen any institution threaten a student-athlete for wearing a certain color scheme that may be reflective upon their brand, it is important for athletics departments, and their student athletes, to recognize that sometimes color schemes may meet ordinary trademark requirements, which could create conflict between institutions and student-athletes. This is especially relevant when student-athletes perform NIL activities without being transparent with their school, and particularly if schools are not clear and explicit in their NIL policies about use of their intellectual property. NIL is complicated and protecting color scheme is another nuance that institutions and athletics departments may want to consider. ■

THE TOM MCMILLEN FEDERAL NIL SCOOP

Continued From Page 2

lege sports working group, nicknamed "Intrepid," where we are interviewing some of our key athletics directors and determining what commonalities may exist. Pat Chun, director of athletics at Washington State University, co-chairs our working group and was recently named to the NCAA's Constitutional Committee roster. Several of our other athletics directors were also named to the NCAA's Committee including Sandy Barbour, vice president for intercollegiate athletics at Penn State, Troy Dannen, director of athletics at Tulane, and Shane

Lyons, director of athletics and associate vice president at West Virginia.

Through our Intrepid committee, we plan to spend our upcoming meeting in Washington, DC, discussing transformational change in college sports, particularly with respect to governance of the enterprise. In addition to these discussions, it will be important for our athletics directors to attend because it serves as a rare opportunity for athletics directors to meet across conference. It will also be important for our members to meet with their representatives

on Capitol Hill to further bolster these relationships now, as the train is leaving the station for more expansive college sports issues to be considered. Redefining college athletes as employees, for example, could be the next big fight for college sports, and that wave will be coming sooner than later.

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! ■

UNC Athletic Department Embraces Group Licensing and Its Student-Athletes Love It

By Holt Hackney

University of North Carolina (UNC) Athletic Director Bubba Cunningham knew he would have a built-in advantage when—after recognizing the inevitability of the Name, Image, and Likeness movement—he explored the idea of a group licensing program that would be a partnership between the school and student-athletes.

After all, few have the international brand that “Carolina” has.

The group licensing program, which builds on the early success of UNC’s Alumni Group Rights program, has been a smashing success.

One reason for that success has been its formula. The program calls for current Tar Heel student-athletes to have the chance to be marketed in groups of three or more within their sport or six or more across multiple sports in cobranded licensing and marketing programs with UNC’s intellectual property. UNC’s group licensing partner is developing licensing opportunities on behalf of its student-athletes in apparel and non-apparel categories and other co-branded sponsorships. Participation in the program is voluntary and does not restrict the student-athlete’s individual NIL rights, meaning they may still negotiate opportunities outside of the program.

We sought out Cunningham to learn more about how the program got its start and what he has learned along the way. That interview follows.

Question: *What were the origins of this program?*

Answer: When it became obvious that

NIL was going to happen a couple years ago, I created several questions to ask our student-athletes. The general question was, “What do you think the next best step should be?” We explored ideas, for example, around autographs, speaking engagements, jersey sales, video games, and trading cards. As we went through those with student-athletes, it made sense that jerseys and trading cards might be the best things to do next.

So, when the NCAA decided it was going to go straight to the individual right, I said, “Well, you’ve given away the group right, because all you have to do is have a voluntary association.” So, I kind of worked it backwards and just said, “Why don’t we try to do this group thing?” Then I received an email from one of our former student-athletes, Malaika Underwood, who said she wanted to talk about some opportunities. We ended up having two or three phone calls. As we discussed it, I said, “Well, what about starting with our alumni?” So why don’t we start a group license with our alumni and then see how that goes? And then if it works for them, then we can try with our student athletes. That’s how we ended up getting there.

Q: *What’s been the reception from the UNC student athletes?*

A: It’s been very good. Just from the basketball team, we have almost everybody signed up. Football, our most popular player right now is Sam Howell. Sam has a couple of individual name, image, and likeness opportunities and he wanted to make sure that he could still have his individual opportunities if he participated

in group licensing.

The other one that’s really on board is women’s soccer. That’s been a big surprise for me. Panini is a company that really was interested in women’s soccer. Whether it’s trading cards or posters, there’s a real interest in developing programs for women.

Q: *What has been Head Football Coach Mack Brown’s reaction to the program?*

A: He loves the group license program. We both really like the idea that there is something for everyone, whether it’s the offensive line or the walk-ons.

Q: *Have there been any unexpected benefits?*

A: About two or three years ago, we created a platform where we take a bunch of photographs during the game and upload them. Then those photographs get pushed out to our student athletes, and they can repost them on social media. At the time, the idea was to help them build a following on their social media channels. It also helped us build following on the institutional social media channels. This program allows the students to potentially monetize some of that built brand.

Q: *Has the program provided a recruiting benefit?*

A: We’ve always felt like the institutional brand was really strong. We have some individuals now that have individual brands. So, over time you’re going to have a history of success that you can point to, but right now it’s simply trying to help them develop the best brand that they can and try to complement it with the institutional brand. ■

Is the NCAA's NIL Policy Retroactive?

By Professor Robert J. Romano,
JD, LL.M., sports law professor at St.
John's University

The world of college athletics changed dramatically when the NCAA decided it would allow student-athletes to monetize their Name, Image and Likeness (NIL) without fear of losing either their athletic eligibility or scholarship. After years of resisting any form of student-athlete compensation, the NCAA finally agreed to an 'interim policy' which would suspend any and all NCAA name, image and likeness rules for all incoming and current student-athletes. What the NCAA did in all actuality was approve an 'interim policy,' which states that "if a student-athlete elects to engage in NIL activity that is consistent with and protected by a valid and enforceable law of the state in which the institution at which such individual enrolls is located, the individual's eligibility for intercollegiate athletics will not be impacted by application of Bylaw 12."¹

While this 'interim policy' will undoubtedly benefit current and future NCAA student-athletes monetarily, what about the thousands upon thousands of former athletes who for years were forbidden from capitalizing on their publicity rights? And more notably, what about those who did attempt to capitalize, but were chastised and punished by the NCAA for receiving what it referred to as "impermissible benefits"? The question becomes, therefore, do any of these past student-athletes have the right to claim that the NCAA's 'interim policy' is retroactive back to when they competed in college athletics? And if retroactive, would it allow them to take any legal measures against either their former university, conference, or the NCAA since they were

denied the right to capitalize on their name, image and likeness?

While a former student-athlete may have a reasonable argument for retroactive effect when it comes to the NCAA's rule change, winning a legal case against their former college, conference or the NCAA would be very difficult. The reasons being a) there is a "presumption against retroactivity which is deeply rooted in our jurisprudence"², and b) there are various Constitutional provisions that constraint or prohibit the enactment of rules or laws that are corrective in nature. These two combined, result in rules and statutes that generally operate prospectively as opposed to retroactively.

As per the presumption against retroactivity, the U.S. Supreme Court found in the matter of *Calder v. Bull* that "Every law that takes away, or impairs, rights vested . . . is retrospective, and is generally unjust; and may be oppressive; and it is a good general rule, that a law should have no retrospect."³ Additionally, in the *Landgraf v. USI Film Products*, the Court again proclaimed, "Elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly."⁴

Constitutionally, the principles disfavoring retroactive application are found in the Fifth Amendment to the U.S. Constitution's Due Process Clause and its Takings Clause. The Due Process Clause prohibits depriving a person of "life, liberty, or property, without due process of law." Litigants have often challenged retroactive rules on due process grounds, alleging that such laws impermissibly create unforeseen

liability for past actions. At the same time, the Takings Clause prohibits the taking of property without just compensation. Therefore, a retroactive rule that would deprive a person, in this case the NCAA, of a vested property right may constitute an unconstitutional taking.⁵ As a result, NCAA and its member institutions can challenge any retroactivity on constitutional grounds, arguing that allowing such creates unforeseen and unanticipated liability for past actions.

That is not to say that former student-athletes are totally without hope, however. Courts have also held that rule changes which reach back only a year or two generally do not raise serious constitutional concerns. The courts have upheld those, expressing approval of rules and statutes that establish "only a modest period of retroactivity . . . confined to short and limited periods required by the practicalities of producing national legislation."⁶

Although not all forms of retroactive rules are prohibited, such do raise fundamental concerns about fairness because they impose liability when it is too late for parties to alter their behavior. In light of those concerns, courts have declined to construe rules and statutes to apply retroactively absent clear evidence of clear intent to do such. As a result, any former NCAA student-athletes would have a difficult time convincing a court that they are entitled to compensation based upon the fact that they were not allowed to capitalize on their NIL during their previous college playing days. ■

1 NCAA Interim NIL Policy.

2 <https://www.natlawreview.com/article/california-legislature-retroactively-declare-what-existing-law>

3 *Calder v. Bull*, 3 U.S. 386 (1798).

4 *Landgraf v. USI Film Products*, 511 U.S. 244 (1994).

5 In *Eastern Enterprises v. Apfel*, 524 U.S. 498 (1998).

6 *United States v. Carlton*, 512 U.S. 26 (1994).

International Athletes and NIL: What You Need to Know

By Katie Lever, M.A.

We're about a month into the NIL era in college sports and many athletes have already taken advantage of their newfound freedom to cash in on NIL. However, one key group is missing out: international athletes. Due to U.S. visa laws, international students—whether college athletes or not—cannot earn money for the use of their NILs. Given the already complex legal landscape around NIL, federal visa laws add another layer athletic departments should be aware of.

First, according to the U.S. Citizenship and Immigration Services website, international students who wish to study as a full-time student in the United States must apply for a F-1 visa, which allows these students to pursue education at an accredited program that culminates in a degree, diploma, or certificate. The catch is that while pursuing their education, they're only allowed to work in extremely limited capacities.

For example, according to Timothy F. Bryson, a doctoral student at the University of Maryland who researches the intersections of college athletics and higher education, "The content of their [international students'] work employment during the undergraduate experience on an F-1 student visa must be tied to their field of study. If it is not, they can still work on campus in a direct service provider role to other students."

Furthermore, all work undertaken by international students must be part-time and authorized by their university, which usually happens as a result of financial hardship. Off-campus work also requires applying for Optional Practical Training or Curricular Practical Training, both of which come with their own sets of paperwork and institutional processes. Changing these requirements would require an overhaul in U.S. visa laws.

Even so, some believe that the work involved in monetizing one's NIL doesn't fit

the legal definition of "labor," and might be permissible. Catherine Haight, an attorney who specializes in work visas, believes there might be some room for interpretation.

"Just tweeting something, or even putting something on Instagram, probably isn't enough [to be considered labor]," she said. "If Pepsi is paying an athlete to hold up the Pepsi bottle with their name and image and likeness, is that services? Is that labor? Good question... that's an issue that's going to have to be litigated and you can kind of argue on either side."

This uncertainty, coupled with the potential consequences of violating U.S. visa law, is keeping many international athletes from monetizing their NILs. If an international student cashes in on an advertisement or endorsement illegally, they risk deportation or legal bumps down the road should they apply for a Green Card. The risks generally outweigh the rewards.

NIL aside, international athletes face many unique challenges when they arrive on U.S. campuses including culture shock, homesickness, and isolation. According to Anicia Ifill and Raquel Montolvo, former international athletes from Bolivia and Barbados, respectfully, increased diversity in athletics hiring is an important way to address the issue.

"That would be a big benefit," Ifill said of increased international representation in decision-making positions. "We've got to start bringing more people who actually can relate to international athletes, understand what they're going through, and give them insight."

Similarly, Montolvo believes inclusion should start as early in employees' careers as possible. This realization struck her when she attended a professional development event sponsored by the NCAA after she obtained her master's degree. She was disheartened.

"Here's a room of 319 people," she said of the event, "and only three or four were international students."

Including international athletes in Student-Athlete Advisory Committees, professional development events, and hiring them in athletic departments are all tangible ways that athletics employees can help serve current international students and enhance diversity on campus. Ifill also recommends awareness and education.

"The biggest piece of this is the education piece," Ifill said, which includes students, staff, faculty, and administrators in educational initiatives. "Because if none of us understand that, we can't help our students. If we can't give them the answers that they need, then we're doing them a disservice."

Luckily, there are educational resources available for those interested in helping international athletes. According to Haight, most universities have an international students office and a designated school officer who manages the program, so making a call across campus could be helpful. Haight also recommends seeking online resources from the [National Association of Foreign Student Advisors](#) and the [American Immigration Lawyers Association](#).

Athletics employees can also use this pivotal moment in college sports reform to lobby for changes in U.S. visa laws and other areas like health and safety and academics that will benefit all college athletes. And anyone overseeing college athletes shouldn't underestimate the power of reaching out to international athletes. They want to be included at the table and their insight is valuable. ■

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.

Attorneys Offer Thoughts of How College Athletic Departments Should Cope with NIL Movement

By Holt Hackney

Pity college and university athletic departments. They are treading water in a sea of chaos that is the Name, Image and Likeness (NIL) movement in collegiate athletics.

On one hand, they have to embrace it, given the recruiting advantage it imbues for coaches and their programs.

On the other hand, there are legal risks, such as breach of contract lawsuits associated with sponsor contracts and IP issues, and NCAA compliance risks if the envelope gets pushed too far.

To that end, we recently queried a cross section of lawyers. Their thoughts are shared below.

Question: *What are the most dangerous things that can happen for an athletic department as it navigates NIL?*

Answer: (Attorney 1) NIL for student-athletes and institutions of higher education is brand new and navigating in uncharted waters. Many dangers are unknown at this time. Based on NCAA guidance, an athletic department can adopt its own NIL policy to help manage and organize the information generated by NIL. If adopted, an institutional NIL policy needs to be flexible in its implementation. We are a little over a month into the process and student-athletes are just starting to return to campus. Any NIL policy needs the flexibility to adapt to changing circumstances from state laws, the NCAA, conferences, and student-athletes.

Answer (Attorney 2): It's important to remember that NIL is generally governed by state law. So, there may be differences from state to state. That said, generally, athletic departments need to immediately understand that the old way of doing business in college athletics is over. Athletic depart-

ments need to make sure they're following the applicable NIL law. By way of example, in Florida, postsecondary institutions need to make sure that they do not make any rule or standard that restricts an athlete from earning compensation for the use of his or her name, image or likeness. Further, postsecondary institutions in Florida need to make sure that they're not considering a student athlete's NIL compensation when determining grant-in-aid or athletic eligibility. These are just some of the requirements in Florida. There are likely similar requirements in other states with NIL laws.

Answer (Attorney 3): The most dangerous things that can happen are (1) athletes entering into deals that either violate state law or violate the NCAA's NIL rules that prohibit NIL deals that are "pay for play" or recruiting inducements, and (2) a university/athletic department violating those same laws and rules. It's still unclear what type of consequences will result for athletes and universities that violate a state NIL law.

Answer (Attorney 4): From a contractual perspective, the most dangerous thing an athletic department can do is to run afoul with its current or future contractual obligations. However, as an NCAA sponsored school, the most dangerous thing an athletic department can do is to let its student athletes run afoul with applicable state laws and/or NCAA rules. Thus, it is incumbent upon the schools to develop well-written NIL policies, stay up to date with emerging state laws, and develop educational resources for student athletes to take advantage. Moreover, it is important that schools facilitate an environment in which they, their student athletes, and their prospective partners can work together to achieve their goals.

Answer (Attorney 5): The recent Supreme

Court decision and the NCAA's reversal of its position on student athletes being able to be compensated and earn money from the exploitation of the Name, Image and Likeness, has created a vast pool of potential influencers who are eager to profit off of their image. What many do not realize is that the universities also have intellectual property rights, and the misuse of the universities' IP could expose the athletes and their sponsors to liability for infringement.

Q: *Please talk about the role of communication between senior athletic department officials and their student athletes and boosters?*

Answer (Attorney 1): Education and monitoring remain key components to ensuring an athletic department maintains institutional control. NIL represents a drastic change in collegiate athletics. However, an institution remains responsible for the activities of its student-athletes and boosters. Accordingly, an institution must communicate its expectations regarding NIL and incorporate disclosure of NIL activities in order to avoid situations that potentially violate NCAA policy to help prevent ineligible student-athletes from competing for the institution.

Answer (Attorney 2): Athletic department officials need to make clear to boosters that while NIL is a complete game changer, it does not mean boosters can start handing out money to student athletes. In fact, the opposite is true. In Florida, NIL payments must be pursuant to a valid contract, which must be provided to the school. Athletic department officials should make sure boosters understand that this not an invitation to create bogus NIL deals as a means to simply pay student athletes for athletic performance.

In Florida, athletic department discus-

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Attorneys Offer Thoughts on Coping with NIL Movement

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sions with student athletes should center on how the parties can work together to make sure a student's NIL contract does not conflict with the term of the student's team contract, as well as processes for disclosure and further compliance with the Florida NIL law.

Attorney 3: This is very important. Athletes and boosters both need to be thoroughly educated on a school's NIL policy, the NCAA's NIL rules, and any applicable state law. Schools should have sessions that athletes are required to attend and there should be one person in the athletic department that athletes can go to with NIL related questions. There should also be an outreach campaign to boosters. Many boosters are very excited about doing NIL deals with athletes. But they need to be educated on what they can and cannot do. Otherwise, there's a big risk they put an athlete's eligibility in jeopardy.

Attorney 4: It will be important for athletic departments to clearly communicate their NIL policies, standards, expectations, and procedures with their student athletes, alumni, and boosters. A thoughtfully developed and well-communicated NIL policy creates alignment in the expectations of those alumni and boosters who seek to participate. These expectations create the framework by which the alumni and boosters can creatively work with student-athletes to maximize opportunity, while at the same time complying with all institutional, legal and compliance requirements. Thus, the result of a well-written and well-communicated NIL policy is, potentially, a fully leveraged alumni and booster database which has the ability to unleash its financial creativity within a reliable framework for the benefit of the student-athlete.

Q: *In what capacity can outside counsel assist the general counsel and athletic department as they navigate NIL?*

Attorney 1: Given the timing of the

NCAA's decision on NIL, the first way is to assist the institution in developing an NIL policy. A number of decisions need to be made, including an institution's stance on institutional conflicts, intellectual property (use of university brands), disclosure requirements, etc. As we move into the academic year and continue to see how NIL evolves, a NIL policy will likely require updates. Outside counsel can be knowledgeable about trends and practical risk management, which helps an institution tailor its NIL policy to best suit the institution and its student-athletes.

Attorney 2: As an outside counsel, I view my role as preventing lawsuits. To that end, outside counsel can alert general counsels and athletic departments to potential exposure areas. By way of example, in Florida, a student is required to disclose their NIL contract(s) to the school. The Florida NIL law allows for the school to determine the manner of disclosure. If a school were to set up a process that makes disclosure difficult or seems to be too complicated for what should be a simple issue, outside counsel could alert the school that it may want to re-consider the established process.

Attorney 3: Outside counsel can assist GCs and athletic departments in a number of ways. One, they can help with drafting NIL policies to ensure they adhere to state laws and NCAA rules. Two, they can help answer questions that athletes, boosters, and businesses have about entering into specific NIL deals and whether they adhere to applicable policies, rules, and laws. And three, they can provide assistance and representation if athletes or the school are accused of violating those same policies, rules, and laws. They can also provide representation if conflicts arise between the school and its athletes over whether a deal is permissible or not.

Attorney 4: Outside counsel will play an important role as athletic departments try to

navigate (1) emerging state law, (2) NCAA compliance, (3) NIL policy and school-related contractual matters, and (4) working with a large number of student athletes (who may agree to thousands of NIL contracts). In this respect, many athletic departments may not have the bandwidth to address these challenges. Consequently, many athletic departments may turn to outside counsel to help analyze new state laws, review individual school NIL policies and compliance, and help facilitate contractual matters.

Q: *What might be a vigorous action plan for a university to protect its IP?*

Attorney 4: In order for universities to best position themselves to protect their own rights, they should ensure that their trademarks are registered, and that their rights in copyrighted material are secure and registered. Universities may also seek to secure and properly document their own licenses to use the name, image, and likeness of the athletes for their own exploitation. With more vigorous prosecution of rights, inclusive of copyrights and rights of publicity, for online usage, it is advisable for universities to implement guidelines for and educate those who populate websites and social media with images and content to avoid potential liability exposure.

Attorney 5: Now that collegiate student athletes, depending on their jurisdiction, have opportunities for endorsement deals, universities may want to take a more active role in advising athletes about the use of school property. In other words, while some college athletes now have a right to monetize their name, image, and likeness, that does not give them the right to use the intellectual property owned by the university in doing so unless the school allows for it.

For example, if Sue Basketball Star can secure an endorsement deal based on her millions of Twitter followers, her school may

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BRAND BUILDING AND SOCIAL MEDIA presented by INFLCR

Building NIL Business Takes Work, Strategy for Student-

Athletes

By Jim Cavale, Founder and CEO, INFLCR



SPONSORED CONTENT

I began seeing a flurry of social-media posts related to NIL in late June as the big day of July 1 drew closer. Student-athletes across the NCAA began sharing the same note:

“According to the NCAA, as of July 1st all student-athletes have been granted permission to capitalize on our name, image and likeness. When this goes into effect, student-athletes are going to be able to brand ourselves and other businesses and companies. Any local or any companies at all that want to use my social media as a platform to promote, do commercials, etc., my DMs are open for business. Message me if interested.”

If only NIL was that easy.

Student-athletes must approach their NIL business in the same way that they look at their training, their nutrition, their education and the other aspects that make up their collegiate experience.

Simply put, you get out of it what you put into it. It will take work to succeed.

It starts with building a personal brand on social media that is attractive to brands and fans. This requires initiative from the student-athlete to show who they are as a person and not merely who they are as an athlete. It's that branding initiative, combined with athletic performance, that will create

the most potent avenues for NIL success.

At INFLCR, we've been working with hundreds of institutions to help tens of thousands of student-athletes build personal brands since 2017.

Student-athletes have accessed thousands of photos and videos produced by their universities and national-media partners, delivered to them via their INFLCR mobile app.

This real-time content helps them post to their social media more often when it comes to the “inside the lines content” about them as an athlete, which helps them build a larger and more engaged audience. Taking this same initiative to tell the story with “outside the lines content” is also important to helping brands and fans understand the athlete beyond the game.

A month into the NIL era, much of the attention focused on the lucrative endorsements of high-profile athletes such as Oklahoma quarterback Spencer Rattler, Alabama quarterback Bryce Young and Fresno State women's basketball players Hanna and Haley Cavinder. But as we have seen through the data of the INFLCR app, which helps

student-athletes pursue NIL opportunities, there is a range of possibilities.

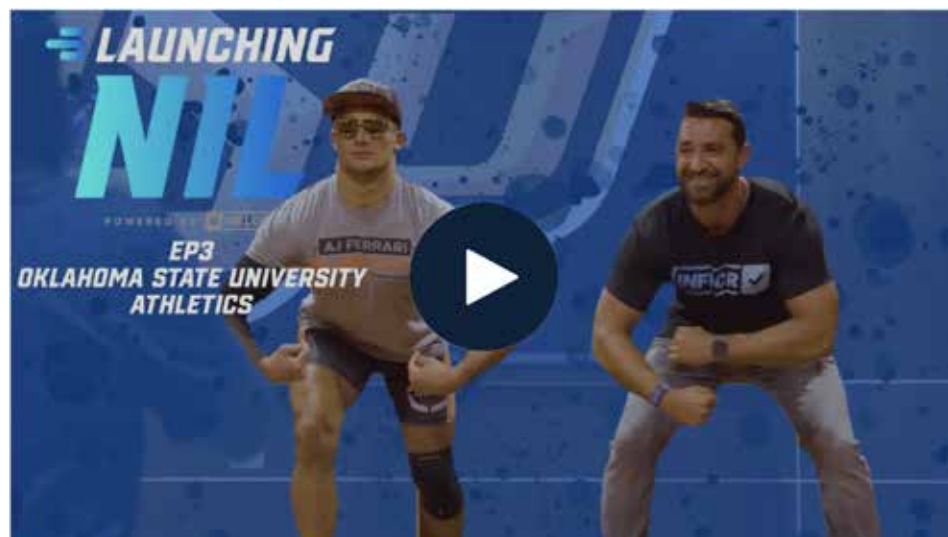
In July, the average transaction value from INFLCR student-athlete disclosures was \$923, with a \$25 median value. The most commonly reported category was social media, followed by camps and lessons. Fifty-percent were reported by athletes playing sports other than football or men's and women's basketball.

Buddy Boenheim at Syracuse University is a great example of how to approach the business of NIL. He has the performance on the basketball court, averaging 17.8 points per game last season. Now he is taking the initiative.

Supporting that effort is why we bring on partners where student-athletes can learn about these endorsement platforms and help build their story through their INFLCR app.

Student-athletes like Buddy can sign up and find brands that want athletes to endorse them locally, regionally or nationally. There are product apps like The Players Trunk that

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See video at: <https://www.inflcr.com/2021/07/30/launching-nil-video-episode-3-inflcr-at-oklahoma-state/>

Contact CEO Jim Cavale jim@inflcr.com

BRAND BUILDING AND SOCIAL MEDIA presented by INFLCR

Arming Student Athletes with the Right Tools to Build Their Brands

By Darius Fleming, Head of Sports Partnerships, Cameo



SPONSORED CONTENT

Cameo was born out of an idea that founders Steven Galanis, Martin Blencowe and Devon Townsend had to bridge the gap between fans and their favorite athletes. It all began with sports. After watching a heartwarming video of former NFL player Cassius Marsh congratulating their dear friend on the birth of his son, the founding team knew there was something powerful at play.

Since then, Cameo has set out on a mission to create the most personalized and authentic fan connections on earth. Now, with over 40,000 athletes, actors, musicians, comedians and pop culture personalities on our platform, anyone can connect directly with their idols—from requesting NFL legend Drew Brees to wish your dad a Happy Father’s Day, to having Olympian Gabby Douglas give your daughter a pep talk ahead of a big gymnastics meet.

As our platform grew to create over 2.5 million magical moments and connect fans with talent across every entertainment vertical possible, we’ve always had a mind for the athletes who were previously sidelined by NIL restrictions. Cameo had all the makings of a perfect platform fit for these busy athletes — we would allow them to build their brands before their professional careers start, make personal connections with their

biggest fans, maintain their own schedule, all while earning extra money for college activities or a charity important to them.

Fast forward to this past July, when the NIL ruling became a game changer for collegiate athletes. As these students celebrated the historic ruling and looked for the right ways to monetize their personal image and likeness, Cameo was ready to equip them with new opportunities and best practices to help build their brands while keeping their “Student Athlete” title their first priority. Once a college athlete myself, I know I would have jumped on an opportunity to join a platform like Cameo.

BUILDING A BRAND ONE PERSONAL FAN CONNECTION AT A TIME

Cameo enables student athletes to make personal connections with their fans in a whole new way. Before NIL, an athlete walking off the field might get a chance to squeeze in a brief hello and sign balls for a couple of fans out of the thousands in the stadium. Now, they’re able to connect directly with each and every one of their fans around the world, from anywhere. Not only that, they’re playing a role in their fans’ biggest life moments. Since July 1, the NCAA athletes on our platform have already delivered thousands of magical moments to fans—from pep talks for tryouts to good luck messages ahead of the new school year. The possibilities are endless and with each personalized request, the athlete gets to show who they are off the field, building a personal brand beyond their sports stats. Additionally, our own data shows that over 80% of Cameos are shared — with each video acting as an advertise-

ment not just for the athlete’s next Cameo request, but for their own personal brand.

THE FLEXIBILITY + CONTROL STUDENTS NEED

With the NIL ruling, student athletes were inundated with new opportunities and have had to navigate this new world while keeping school top of mind. Cameo allows student athletes to do just that—by giving them full control of what they do, how they do it, when they do it, without any contractual agreement. Our platform enables students to choose which of our products they’d like to use for fan connections, set their own prices, decide which requests to fulfill and when they fulfill them. Cameo requests are typically 30-45 seconds in length and have a standard four-day turnaround. Student athletes can make these fan connections during their downtime, as they walk to class, take a lunch break, or even while they sit on the team bus or plane.

With over 340 college athletes on Cameo already, and more joining every day, there’s a massive opportunity for these students to leverage our platform to build their individual brands without sacrificing their academic and athletic priorities. The platform is designed to give them the flexibility and resources to seamlessly integrate personalized fan connections into their everyday lives — building personal brands and even having some fun while doing it! Based on the overwhelming feedback we know they’re just getting started and we can’t wait to support them along this new journey. ■

FINANCIAL PLANNING presented by TeamAltemus

NIL Immersion on Campus: Taxes, Cryptocurrency, Agents and Other Universal Issues

By Courtney Altemus, CEO and founder of TeamAltemus

TEAM ALTEMUS



SPONSORED CONTENT

More than 10,000 student-athletes (SA) and hundreds of athletic department staff have already experienced our workshops in 2021. Whether in-person or virtual, we always invite them to tell us what their biggest questions, concerns or issues with NIL. Our interactive and dynamic sessions keep us immersed in the real time issues that come up for them. Let's dive into a few of the recurring ones and how we help staff and student-athletes navigate them.

TAXES

While this was universally identified as a needed education topic for SAs participating in NIL, the dearth of knowledge wasn't widely expected. The following are some of the tax questions that arise on every campus:

- Independent Contractor: What is it?
- W-9 form: What is it? Where do I find it? What do I do with it?
- Tax liability calculations: Why do I have to do this? What is federal, state, and local?
- 1099s: What are they? Why are there different kinds? Why do I need to care about them?

Most SA's don't understand that all

Contact CEO Courtney Altemus at
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compensation (cash, in-kind, merchandise, etc.) is taxable and how to account for the liability.

One example of the less common but concerning situations we've encountered include companies that have offered "tax-free" deals to SAs. One company told a group of SAs that they would be compensated in cryptocurrency so they wouldn't have to pay taxes. While most seasoned taxpayers know this is absurd, SAs have no such experience or basis when confronted with opportunities like this.

VETTING OF AGENTS AND OPPORTUNITIES

The second universal topic that comes up with staff and student athletes is how to choose the best third parties; whether they be professional service providers or NIL opportunities. Marketing agents can be beneficial because they enable SAs to minimize distractions and time spent sourcing

and vetting NIL opportunities. Agents will tell SAs that they know the business and brands, they can find them the best deals, and the SA's are best served with a professional guiding them. All points are true on the surface. However, unless a student athlete does extensive due diligence, they have no idea if the person they're speaking with will actually perform all of these duties for fair compensation and in the best interest of the student athletes.

BARSTOOL ATHLETES: A MINI CASE STUDY

Most campuses have at least one student athlete who is a Barstool Athlete. The July 1 live launch on social media of this new offering was savvy and effective. It gives Barstool quick and broad access to college campuses through SAs wearing its merchandise and SAs are excited to be associated with the popular media company with 11 million

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NIL Immersion on Campus: Taxes, Cryptocurrency, and Agents

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followers. The suggested advantage to an SA is an automatic boost in followers once they identify as a “Barstool Athlete” on social media. Barstool is partially owned by Penn National Gaming, something that many SAs aren’t even aware of. Part ownership by a sportsbook might not ultimately cause violations outside of states and/or schools with rules directly against it. However, representing a company with a sportsbook and gaming part-owner clearly carries potential risk that needs to be vetted before the SA makes a decision that needs to be assessed. Without tools to identify potential risk factors associated with all NIL third parties and the knowledge that they need to look for risk factors, the SAs are engaging without adequate protection. While the association with the gaming industry may not be problematic in every state and/or school, SAs need to understand who they’re agreeing to represent. The due diligence process (S.I.F.T.) we teach SAs is a straightforward and repeatable one they can use for life. Our due diligence technology is the only offering that provides a uniform of vetting protocol that not only helps SAs protect themselves from potential pitfalls, but also adds a layer of risk mitigation for the schools’ athletic department.

NIL education is real world application of concepts like due diligence and risk mitigation. The idea of protective education is critical for both SAs and athletic departments.

How Do I Start?

Aside from the already recognizable SAs and/or teams who have received inbound inquiries for activities, most other student athletes must seek out activities to engage NIL opportunities. Even when SAs have state-of-the-art content curation and branding platforms readily available, many don’t know that there are more NIL opportunities aside from social media influencing. We work with SAs to identify goals, needs, and values for both the short and long term.



Pictured with MSU Head Basketball Coach Tom Izzo are Rashad Campbell (TeamAltemus), Courtney Altemus, Bruce Wimbish (Anomaly Sports), and Luke Fedlam (Anomaly Sports).

Continually checking in with their goals and values throughout NIL and life is an important foundational concept we teach.

We help them identify either local businesses near campus or in their hometown that align with those values and start reaching out to see if you can help them grow their businesses. We also highlight camps and clinics and in a case study we explore

them to ensure that SAs are proactively aware of all issues including releases for both participants and parents to sign and insurance for facilities.

As an unbiased NIL partner who is engaged with SAs and staff on a daily basis, TeamAltemus is continually identifying common challenges and creating solutions. ■

NIL INSTITUTIONAL SCOOP

The NCAA's Former Principle of 'Home Rule' — Could History Be Repeating Itself in College Sports?

There is a saying that history often repeats itself. In *Alston v. NCAA*, the NCAA's strongest legal defense was greatly weakened. The Supreme Court of the United States (SCOTUS) essentially dismissed the NCAA's argument based upon the *Board of Regents* (1984) case, which stated that the amateur status of college athletes (not paid to play) is a key feature distinguishing college sports from professional sports. So, this ruling likely has the practical effect of subjecting all NCAA compensation restrictions to increased legal scrutiny now using *Alston* as precedent, instead of *Board of Regents*. But it is not just the NCAA's compensation restrictions that may be under increased scrutiny. States now have become the laboratories for change in college sports and certainly the body politic in America has changed in such a way that any national restriction on college athletes, even rooted in the principle of competitive equity, will likely be scrutinized. For these reasons, the NCAA recently announced the creation of a Constitutional Committee that has begun work to deliver proposals that will aim to create transformational change in college sports.

This may seem like a daunting challenge, especially given all the fragmentation that has been evident over the past year or so in college sports. After all, the NCAA's rulebook is approximately 300 pages, and most of the rules are based on principles designed to restrict institutions and college athletes from acting individually to achieve more equitable competition. The NCAA's Constitution, for example, has explicit principles governing recruiting, eligibility,

financial aid, competitive equity, and of course, the principle of "amateurism" to protect college athletes from exploitation by "professional and commercial enterprises." After the *Alston* ruling, given some of these restrictions, institutions are now expected to develop their own rules about student-athlete name, image, and likeness (NIL) activities within the parameters of the NCAA's interim NIL policy, which basically declares that state NIL laws take precedence over NCAA rules, and in states without NIL laws, each school is expected to make its own NIL policies.

But, despite all these issues that the NCAA needs to sort out, this regulatory environment might not need to be as unprecedented as some might think. In fact, as LEAD1's President and CEO, Tom McMillen, stated in this issue's "*Tom McMillen Federal NIL Scoop*," in order to bring some of the most prestigious institutions under the NCAA's jurisdiction, the NCAA, in its infant stages, adopted a principle of institutional autonomy called the "Home Rule principle." Mandatory eligibility rules, for example, were judged "impracticable," by then NCAA President Palmer Pierce. To enact Home Rule, the NCAA's constitution in 1907 simply read – "Legislation enacted at a conference of delegates shall not be binding upon any institution." As Ronald Smith wrote in his book titled "Pay for Play – A History of Big-Time College Athletic Reform," – "the colleges agreed collectively to act individually...there would be no national eligibility rules enacted and enforced by the NCAA for nearly a half century. Moral force, not political force,

was the keystone of the NCAA's diluted power in the early years," said Smith. The evolution of Home Rule, with fragmented and decentralized rulemaking, eventually resulted in the passage of the NCAA's 1948 "Sanity Code," which resulted in more centralization of rulemaking and a more powerful NCAA.

The answer for college sports in a post-*Alston* world may very well look like a variation of Home Rule. It would simplify the NCAA's rulebook, align with the current NIL and *Alston* regulatory landscape where schools and conferences have great autonomy, and help the NCAA meet its self-imposed deadline to have the membership vote on the Constitutional Committee's proposals in January 2022.

In such a system, the NCAA could focus on being a hub for information sharing and best practices, and still govern at least minimum national standards for some things like roster sizes and basic recruiting standards. Financial aid decisions, whether to allow headcount and/or equivalency sports, coaching staff regulations, and other possible restrictions could, however, all be left to the conferences and institutions just like the NCAA's former principle of Home Rule, even more than a century after its adoption. If the current experiment with a modern version of Home Rule failed in the years ahead because of rampant abuses or other issues, it may be up to Congress to restore the powers to a national organization to create the more even playing field, which has been so fundamental to college sports. ■

Decentralization Offers New Opportunities to Reimagine College Sports – The Operative Question is ‘Why Not?’

Prepared by LEAD1 Association

Several months prior to college sports name, image, and likeness (NIL) rule changes, Tom Holmoe, Director of Athletics, at Brigham Young University (BYU), and his head football coach, Kalani Sitake, were concerned that only a few top football players on their team would secure significant NIL agreements. The duo, however, imagined a scenario by which the entire football team could benefit from NIL rule changes. So, they created a program for their student-athletes, “Built4Life,” to help student-athletes prepare for life after college athletics, while also helping them monetize their NIL. The premise was to help all student-athletes with future professional opportunities. Recognizing the broad-based support that BYU athletics leadership had planned, BYU’s corporate partner, Built Brands LLC, a protein bar manufacturer, approached the athletics department about a concept that will now likely redefine what it means to “support an entire team.”

Earlier this month, BYU and Built Brands (Built) announced the creation of separate innovative NIL agreements with individual members of the football team. Built’s individual NIL agreements with BYU football players include compensation to all members of the team, including compensation to walk-on players in the amount comparable to the costs of tuition for the academic year. All 123 BYU football players will have the opportunity to enter into agreements directly with Built, including 36 walk-on players. All players who enter into the NIL agreement will wear Built branding during practice and be required to promote Built at various in-person events and on social media.

For other athletics departments wondering why they can’t do the same with their own

preexisting corporate partners, it is worth noting that BYU’s situation is unique. First, BYU is in Utah, which does not have a state NIL law, so the NCAA’s interim NIL policy is the only applicable regulatory framework. Yet, the NCAA’s interim policy provides schools with ample latitude to use their own discretion when creating policies, but for potentially violating NCAA “pay for play” rules. Second, unlike many other Football Bowl Subdivision (FBS) schools, tuition at BYU is relatively inexpensive, generally less than \$6,000 per academic year. Because of these factors, BYU was in a unique position to orchestrate the NIL framework with Built. Although BYU is unique, this framework could open the floodgates for other FBS schools to arrange similar NIL agreements for their student-athletes.

“The spirit of the agreement was to unify our team and not pay players to play,” said Holmoe. “It was never our intent to be a game changer in NIL. Rather, our intent was to involve as many players on our team as possible in NIL with an eye toward education and helping student-athletes build their brands.”

While the framework for the individual agreements was established between BYU and Built, BYU is not actually a party in any of the contracts as the agreements are merely between Built and each student-athlete (but for BYU’s own separate agreement with Built as a corporate partner of its athletics department). So, a student-athlete could still negotiate and potentially modify their own NIL agreement with Built, although the general framework for each agreement is a one-year term.

In addition, each BYU football student-athlete is not required to enter into an NIL agreement with Built, and the agreements

are taxable, as they are not scholarships. For further perspective, BYU still requires disclosure of all student-athlete NIL deals and is generally providing education and guidance for student-athletes when they consider entering into NIL agreements.

AN UNINTENDED CONSEQUENCE

One unintended consequence of these type of agreements, especially with preexisting corporate partners, is the possible displacement of monies issue, where funds that would otherwise be directed toward the athletics department, now may be directed solely towards individual student-athletes. According to Holmoe, this possible displacement issue was considered, but he still made the decision to move forward with the relationship.

For Built, the new relationship has already paid off as the national and local media exposure has been tremendous since announcing the partnership, said Chad Gwilliam, Assistant Athletic Director and Director of Compliance at BYU. “The strength is in numbers [in terms of sheer volume of football players],” said Gwilliam.

The fundamental question for college sports is whether BYU has changed the game in terms of walk-ons becoming sponsored athletes, and whether corporate partners, particularly preexisting ones, will pay entire, or large portions, of teams for use of their services. In a deregulated college sports environment, more agreements like this are inevitable for all sports, not just football. These agreements are quid pro quo arrangements, and legitimate depending upon the state law.

So, the question is why aren’t more schools doing this? Well, it seems as if BYU may have paved the way, and one can only imagine that more agreements like this will soon follow. ■

NIL INSTITUTIONAL SCOOP

University of Arkansas Emphasizes NIL Education

By Holt Hackney

University of Arkansas Director of Athletics Hunter Yurachek made a critical decision last spring when he hired former Razorback men's track and field student-athlete Terry Prentice as Senior Associate Athletics Director for Athlete Brand Development and Inclusive Excellence.

Prentice has not disappointed.

As the leader of the Athlete Brand Development unit, Prentice focuses on preparing Razorback student-athletes to maximize opportunities in the NIL space. He also coordinates the development and implementation of diversity, equity and inclusion action plans.

We sought out Prentice for an interview and to get his thoughts as a former student-athlete.

Question: *How has being a former student athlete helped in your new position with Arkansas, and particularly leading athletic department student-athlete name, image, and likeness activities?*

Answer: Being a former student-athlete has been an advantage, especially in terms of understanding the time commitments that a student athlete faces and what they're up against on a day-to-day basis. But also, when I think through NIL, our student athletes know that I've been in their shoes before. It hopefully provides a bit of relatability to the student athlete and an ability for them to be open and honest with me about potential opportunities that they might have or things that they might need some assistance with in terms of public speaking or business skills or time management. It's definitely been an advantage.

Q: *What are some of the initiatives that Arkansas has implemented as it relates to NIL education and helping student athletes maximize their NIL opportunities? Particularly*

the newly created office within the department, the "Athlete Brand Development" department?

A: I have to give kudos to Hunter [Yurachek] for the vision and foresight. It's been awesome to have resources and staff members that can just focus on NIL as opposed to having a host of other duties. While we launched our flagship program in May, it has been in the planning stages for well over a year, prior to me coming back to the University of Arkansas.

So I took some of the ideas and things that were down on paper from a conceptual standpoint, and helped bring them into action. We started with a summer pilot program that featured 50 student-athletes over the course of two sessions of summer school. One week, for example, focused on business basics, so thinking about beginning with the problem in mind and what it means to be an entrepreneur, and how to develop an LLC or an S-Corp, or becoming a sole proprietor, or what that actually means from a business standpoint. We had a week focused solely on influencer marketing and the NIL legislation. We had another session that focused on taxes and really those nitty-gritty business basics again. And we had another day that focused on improv, so learning how to think on the fly, learning how to present oneself, public speaking, learning how to pitch yourself and really the art of storytelling. We did all that over five weeks with 25 student athletes.

We feel like we're in a good position for our student athletes to capitalize on their NIL, but we'll continue to adapt as we see other things coming about and as we talk to colleagues around the country, and maybe some of the things we do aren't going to be the most successful, but the best thing we have on our side is time to continue to adapt and evolve.

Q: *What might be some best practices as it relates to ensuring that outside third parties and boosters follow the applicable laws?*

A: Probably the first thing every athletic department should do is shore up those relationships with your development office and your sponsorship office. Making sure that they are fully educated on what the NIL law is in the state, if your state has one, what your athletic department policy is, and then really how that impacts their business model. Then number two, how their corporate sponsors or their donors and boosters can involve themselves in NIL activities. Making sure that those individuals are fully educated because they're the boots on the ground. They're having the conversations day-to-day with those individuals. Those folks are buying season tickets, they're buying suites, they're coming to games, they're supporting the program at coaches' shows, they're out in the community, so making sure that those relationships are strong, and the open line of communication is there.

Q: *Obviously you were on our Diversity, Equity, and Inclusion Working Group. Could you provide some insight on how you see NIL impacting diversity in college sports?*

A: I'd probably start with gender diversity. It appears as though, thus far for us, our female student athletes are having ample opportunities to capitalize on their NIL, and in particular, there might be a few key individuals on a team that are extremely high profile, that businesses in our local community seem to have a genuine interest in because they're looking at what sells to their audience, and what might help them develop their product and take that product to the next level.

As far as diversity from an ethnicity standpoint, I've been pleased with the opportunities that our student athletes have. We just have to make sure that we understand the needs of each individual student athlete, and really because we don't know what their

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NIL Can Be a Win-Win for Athletic Departments Worried that NIL Will Cause a Drop in Philanthropic Spending

By Holt Hackney

There's a finite amount of money, or so the theory goes.

So, when it comes to NIL, what happens when your biggest boosters decide they want to commit their financial resources to the star quarterback or the charismatic softball pitcher in support of the student-athlete's NIL ambitions.

The theory would suggest that your athletic department may bring in less from a philanthropic perspective. Perhaps that capital project would have to wait, given that the booster has found "a better" way to spend his or her money.

Fortunately, the athletic department may not suffer. We sought out Joe Foley, senior associate athletics director for advancement at Penn State University, for some early insight on this dynamic. That interview follows.

Question: *What kind of dialogue have you had with boosters regarding NIL and the impact it may have on their philanthropic spend?*

Answer: Many of the donors who support Penn State and our student-athletes have reached out to us to learn more about NIL. Our conversations with them have largely focused on the positive aspects of NIL for our students. We are an institution of higher education and here at Penn State we are using this as yet another opportunity to educate our students. Our athletic department has

created a comprehensive program, which we have branded "STATEment", educating our student-athletes on important topics such as entrepreneurship, building their own brand, the value of our alumni network and being financially literate. At the end of the day, the most important aspects of our student-athlete experience have always been the great college education they earn in the classroom combined with the opportunity to compete for Big Ten and national championships. That is what we have asked our donors to support in the past, and that does not change in this new era of students monetizing their name, image and likeness.

Q: *Is it a valid concern that boosters might commit more of their spend to NIL-related initiatives, rather than philanthropic gifts to the university or athletic department?*

A: It is something to keep an eye on, especially since so much of this is still new and where this all goes remains to be seen. Thus far we have not been told by any of our donors that they intend to redirect their future support to fund NIL-related initiatives. Philanthropy tends to be genuinely altruistic, as opposed to NIL-related initiatives which are driven by a quid-pro-quo. I think both of those can co-exist, and both can probably thrive. My sense is that donors have a passion for our universities, and for impacting the lives of students. I do not expect that

to change. That said, it will be important for athletics leadership and development professionals to pay close attention to this topic as it continues to evolve.

Q: *Is there a scenario where the student athletes signing NIL deals could actually broaden the donor pool? If so, in what way?*

A: It is certainly possible that throughout the business relationship between a sponsor and a student-athlete, they could become more aware of the institution's educational mission and wish to support that as well. How likely is a scenario like that – at this point nobody knows as so much of where this is going remains to be seen.

Q: *What are some of the ways that athletic departments can protect the donation stream from alumni or boosters?*

A: Our Vice President for Athletics, Sandy Barbour, likes to say, "Keep the 'Main Thing' the main thing." To all of us here at Penn State, the main thing will always be educating our students. One way athletic departments can protect the generous support they receive from donors is to continue to maintain a culture that prioritizes academics first. If student-athletes take care of business in the classroom and on the field, it does not seem egregious that they could also monetize their name, image and likeness in whatever free time they might also have – just like every other student on campus. In addition, it will be critically important for fundraising professionals to articulate a thoughtful and compelling case for donor support. Being able to clearly explain to a donor why we need their investment, how it will impact our students, why now is the most critical time to make the gift and how a gift to our institutions helps them accomplish their own philanthropic goals can help to retain donors in support of our important missions. ■

Arkansas Emphasizes NIL Education

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baseline knowledge is of business, so we have to make sure that we stay as plugged in as possible. If an institution doesn't have the resources or bandwidth to hire a position specifically for NIL, you need to lean on those individuals that have had the day-to-day contact and relationship with student

athletes that come from diverse backgrounds to make sure you understand where they're coming from. Then once you understand where they're coming from, I think you can adapt your education much better, but also making sure that they have what they need to feel comfortable. ■

NIL INSTITUTIONAL SCOOP

Colorado Takes Lessons Learned from ‘Buffs with a Brand’ to Hit the Ground Running with NIL

By Holt Hackney

The University of Colorado (UC) was ahead of the curve when it comes to being proactive with the Name, Image and Likeness movement.

Specifically, it set up an initiative to create a program back in 2019.

What emerged was “Buffs With a Brand,” a program designed to identify ways to help their athletes learn about the ins and outs of business and entrepreneurship. Officially announced in June 2020, the program began in pilot mode in August of 2020. In its first year, the program included an educational component as well as matched athletes with venture coaches according to their entrepreneurial interests.

The pilot year of the program culminated with a Shark Tank–style venture night last May, which involved athletes presenting their business plans and profit-loss statements to a small group of judges.

We wanted to learn more about the program, so we reached out to Lauren Unrein, UC Associate Athletic Director and Director of the Scripps Student-Athlete Leadership and Career Development.

Question: *Who came up with idea and what was the thought process behind its creation?*

Answer: Our department was working on ideas on how we can foster and encourage the entrepreneurial spirit of our student-athletes. CU and Boulder are very entrepreneurial areas, and many of our student-athletes who aren't in a business

or entrepreneurship class have that interest but there wasn't a specific resource or outlet for them. We partnered with the award-winning Deming Center for Entrepreneurship within our Leeds School of Business here on campus to launch Buffs with a Brand back in the summer of 2020. The Director of the Deming Center, Erick Mueller, has been a guiding force for this program. Buffs with a Brand has three foundational pillars that drive all of the programming and resources we provide – Entrepreneurship, Brand Management, and Financial Literacy. The goal of our program is to help student-athletes leverage their student-athlete experience in the most holistic way possible. We want to make sure our student-athletes have the foundation to utilize their NIL, start a business, etc.

Q: *How did the advance of NIL shape its creation?*

A: Buffs with a Brand was launched in the summer of 2020, almost a year before NIL began here in CO. Our goal was to be proactive, to pilot a program that was one of the first of its kind, and understand what our student-athletes are interested in as well as the most impactful delivery method, so when NIL did arrive, we were well versed and prepared. There have been times where we have to pivot our programming to stay compliant within the CO NIL law, but as with any entrepreneurial venture, you have to be ready to pivot! This year we are hosting additional Buffs with a Brand workshops covering an even wider

range of topics in order to best serve the goals of our student-athletes around NIL or otherwise.

Q: *What was the hardest part about getting it up and running?*

A: Launching a new program in a pandemic was challenging in terms of scheduling with our student-athletes whether they were in Boulder, or across the country, but our focus remained on providing world-class and holistic programming regardless of if it was on Zoom or in the classroom.

Q: *What was surprisingly easy about creating the program?*

A: The collaboration and support we've received within the athletic department, as well as on campus has been helpful in launching the program in 2020, and rolling out the new Buffs with a Brand program this fall with new NIL laws.

Q: *What has the participation levels been as far as student athletes?*

A: We have a really broad and diverse range of participation from our student-athletes, ranging from those who drop-in to one specific workshop, to others who participated in every single session last year!

Q: *How would you advise other schools in creating such a program?*

A: Do the homework on what the interests are of the student-athletes, leverage the expertise of those around campus and in the community, and don't be afraid to pilot a program or be an entrepreneur and pivot or adjust when needed! ■

Agents and NIL: Navigating the Uncertainty of the Professionalization of Collegiate Athletics

By Michael A. Ross, MS

With the recent passing of legislation and increased support of collegiate athletes winning the rights to profit from their name, image, and likeness (NIL), there are many controversial issues warranting careful attention. One such area is the involvement of sports agents, who are now allowed to partner with student athletes. Among the many questions are what guidelines are set in place for agents to reference and abide by and will such athletes protect athletic departments and their student athletes?

On July 1, 2021, the National Football League Player's Association (NFLPA) released a memo for agents and contract advisors (CA) to reference as the age of collegiate NIL begins to take form and develop at an accelerated rate. Within this memo, the NFLPA states that agents "are permitted to enter into NIL marketing agreements with a college player, which agreements are not generally the subject of the NFLPA's Regulations." The memo continues by stating,

Under the Regulations, it is the agent's responsibility to monitor and ensure that they are in full compliance with all applicable state and federal laws, as well as NCAA rules that impact the player's eligibility. Further, any NIL contracts entered into with college players by a Contract Advisor should be wholly separate from any future Contract Advisor services involving the negotiation of player contracts with NFL teams; for example, a NIL contract should not include any terms that require or condition any NIL terms on the player later hiring that Contract Advisor for NFL contract services.

In other words, agents may be retained and help collegiate student-athletes with NIL specific deals and opportunities that abide by state, federal, and organizational guidelines, but that agent's term must end before transitional deals can be made for the same athletes at the professional level.

POINTS OF INTEREST

When asked about how the NIL legislation may progress, Ellen Zavian, a law professor at George Washington School of Law and former agent, told me that because of the current status and NIL legislation being in its infancy, a closer look into the guidelines and potential pitfalls needs to be addressed for a more educational benefit of all stakeholders. As the memo states, and the current guidelines lay out, agents and CAs should defer to state, federal and organizational rules and regulations when navigating NIL marketing and sponsorship opportunities for their perspective clients. The state laws, in theory, are established to help protect the constituents within their jurisdiction and proximity. This protection does not differ when considering athletes within their home state or athletes who have opted to leave their home state to participate in collegiate athletics and get their education within the state being represented.

Considering that many of the current federal laws deemed applicable tend to defer to the state's discretion, it is of the utmost importance that agents and CAs alike brush up on the state laws of which the athletes they intend to represent call *home* during their collegiate tenure. The aforementioned state laws should be aimed at not only protecting their own constituents, but also serve as a deterrent against agents who may not have the best interest of their prospective athletes/clients in mind.

At the time of this article's creation, the NFLPA is the only North American professional sports organization to offer anything close to a guideline or best practices reference for agents and CAs to abide by. When asked if it is surprising that other professional sports organizations have not come forth with anything and the lack of detailed information within the only memo that has addressed this topic thus far, one agent stated that because this is an area of questionable and uncertain jurisdiction, more detailed information may come as this area of sport continues to develop.

Historically the NFLPA agents have had jurisdiction over NFL players and other eligible stakeholders, but this new realm insists that the NFLPA is attempting to gain jurisdiction over National Collegiate Athletic Association (NCAA) athletes which is an area they have never had and still do not have full jurisdiction. Having questionable, or no jurisdiction, creates numerous potential pitfalls and room for possible unethical and operational control conducted by agents and CAs who do not have the best interests of the student-athletes in mind. When asked about how to navigate this issue efficiently and effectively, Zavian stated that certified NFLPA agents will continually seek out increased education on both the state and federal legislation currently in play while becoming a source of education themselves for others to better navigate the currently evolving landscape that exists between collegiate athletes and agents. Because this relationship has been forbidden and essentially outlawed until now, there is a need for increased education as a whole to address the intricacies of these new and complex relationships to ensure positive outcomes

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MEDIA RELATIONS presented by FINN

NIL – A Chance to be Creative on the National Stage

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



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At the stroke of midnight on July 1, college sports as we know it was changed forever.

Moments later, student-athletes all over the country began cashing in on Name, Image and Likeness (NIL). This was very reminiscent of my days working at the NBA during the free-agency period when shortly after midnight, reports of major player signings would quickly unfold.

But unlike the NBA free-agency period, there is no end in sight for NIL signings. In fact, as many of you are aware, we are just getting started.

Over the last two months there has been a barrage of deals by brands both big and small.

Boost Mobile tapped Fresno State women's basketball twins Haly and Hanna Cavinder and has since added hundreds of other student-athletes to their roster. Dr. Pepper signed Clemson quarterback D.J. Uiagalelie. 1-800-Got-Junk teamed with Kansas basketball player Mitch Lightfoot. The list of student-athlete NIL deals goes on and on.

And brands are not the only ones jumping into the action. Professional sports teams are joining the fray as well.

Recently, University of Miami quarterback D'Eriq King signed a deal with the NHL's Florida Panthers, becoming the first

collegiate athlete to sign an NIL agreement with one of the major professional sports leagues.

Expect other major professional sports teams to follow with similar deals as a new way to further engage and connect with their fanbase.

Campus life is surely going to be different this fall, as there are already reports of student-athletes receiving seven-figure deals.

University of Alabama Head Football Coach Nick Saban said sophomore quarterback Bryce Young has already secured NIL deals worth \$1 million. Incoming Tennessee State freshman basketball player Hercy Miller, and son of rap mogul Master P, signed a \$2 million brand ambassador deal with Web Apps America, a software development company, in Los Angeles.

So, what does this new era of college sports mean for our approach to communications?

In my last article, I highlighted communications strategies implemented during my time at the NBA, and now here at FINN Partners.

The reality is, being prepared, establishing your key messages, identifying a proper spokesperson, and communicating to all your constituents, are ALL still essential for any college in today's fast-paced world of NIL.

All of these things MUST continue, along with providing proper resources for student-athletes.

But another key thing to remember is that NIL has provided a unique opportunity for schools to be creative. To do things never done before, to form unique and groundbreaking partnerships, and then bring them to the national stage.

This creativity and generating both national and local exposure is where the win-win for both colleges and the student-athletes happens.

This was never more evident in a recent NIL partnership with Brigham Young University.

BYU announced a unique deal with Built Brands, where the local Utah-based protein bar company was not only offering all 123 members of the Cougar football team an endorsement deal, but also plans to cover the cost of tuition for every walk-on player, for at least one year.

Definitely eye-catching and certainly a first-of-its-kind with walk-ons cashing in. In fact, the announcement received widespread coverage in many key national sports outlets including ESPN, USA Today, Associated Press, Sports Illustrated, and many others.

In the ESPN story, associate athletic director Gary Veron noted, "We're trying to put BYU on the map for all the right reasons. We knew this would be exciting to be kind of the first ones to the dance in this area."

It certainly pays to be first, and yes BYU does have an advantage with no state laws revolving around NIL, giving them the freedom to do such a deal.

But give them credit, along with their communications team for seeing an opportunity, and putting their college and students on the map. The BYU deal and coverage definitely has the college world talking.

Sure, there are still a lot of unknowns on how NIL will continue to move forward and if the federal government will get involved.

Until then, expect the NIL deals to continue to push forward at warp speed. Communications professionals should look to be creative, find unique stories, and look to use NIL as a way to put your school on the national stage.

Again, a win-win for everyone. ■

John Acunto is Senior Partner of Consumer, Lifestyle & Sports Practice at FINN Partners (www.finnpartners.com), a global marketing and communications agency.

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Tax and Other Issues to Consider Due to NIL

By Lisa Barringer and Ronald Nahass,
of RSM US LLP



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July 1 changed the landscape for amateur athletics, as college athletes can now receive payment for their Name, Image, and Likeness (“NIL”).

For example, Michigan State kicker Matt Coghlin created a viral tweet when he announced, “Business is open...and business is BOOMING! DM me if you want to promote your brand!”

However, is it that easy? Prior to July 1, athletes focused on their education and their sport. Now, athletes will further divide their time to include running their NIL business. What are some of the relevant tax considerations athletes should consider with NIL?

TAXES

Earned income is taxable. Prior to NIL, some athletes simply were included on their parents’ returns. Some parents therefore may lose tax advantages from no longer reporting their children as dependents.

NIL income typically will be characterized as self-employment income, subject to self-employment taxes. Such income is reported on Schedule C of their individual tax return. Endorsement contracts classify the athlete as an independent contractor (not as employee), meaning the payor is not required to withhold taxes. The athlete pays tax on the net income, calculated after

deducting business expenses such as agent commissions. As independent contractors, athletes should set aside money to pay quarterly estimated taxes, and consult with a tax advisor as to the amount needed.

In addition to federal taxes, athletes will face state income taxes depending on their state of residency and even where services are performed. State personal income tax rates vary from 0% (e.g. Florida, Nevada, Texas, and Washington) to over 12% (California). Because the state of residency taxes 100% of income wherever earned, establishing residency in a state with little to no income tax could achieve large tax savings. It is possible that NIL income could trigger other state filing responsibilities, depending on how the income is sourced.

Despite their young age, college NIL athletes also should consider general estate planning, and even pre-nuptial agreements.

ENTITIES

Athletes may be advised to form a business entity such as an LLC or an S corporation for their endorsement income. A single member LLC provides limited liability, but technically is the same as a sole proprietor as such entities are deemed “disregarded” for tax purposes. An S corporation is a separate legal entity. Endorsement income is reported under the corporation’s name and as such is no longer considered self-employment income (thereby escaping imposition of the 2.9% self-employment tax). However, forming an S corporation leads to thousands in additional annual costs such as legal filings, tax accounting, and compliance. Thus, the savings of forming entities need to outweigh the costs. In addition, athletes with S corporations may want immediate access to the corporate funds. S corporations must pay “reasonable compensation,” thus the athlete, typically the sole shareholder, will be paid

via salary from the entity and in addition could take distributions. Consultation with a tax advisor is advised, as well as assistance with properly registering for payroll taxes.

AGENTS AND THIRD-PARTY ADVISORS

Agents can now sign college athletes before they declare for a draft. Typically, professional athletes have a team of advisors including an agent, CPA, marketing agent, business manager, and investment advisor. Certain college athletes may consider creating a similar team to help him/her run their NIL business, permitting them to focus solely on sport and school. Some universities hire companies to help their student athletes navigate the NIL landscape, thereby creating a more impartial advisor arena.

If relying on friends and family, athletes should question whether they are capable of reviewing contracts. Is the compensation reasonable to the demands of the athlete? Should logos be trademarked? What is the duration of the contract? Is it an exclusive, meaning the athlete is precluded from signing deals in similar or even dissimilar markets? All contracts should be reviewed by a competent attorney.

FUTURE OF NIL

The current patchwork of NIL rules could lead to future inequality. For example, if a college athlete has scholarship offers from California and Florida universities, he/she may now lean toward Florida due to the lack of a state income tax. Should there be a federal uniform standard? And will a federal law ensure balance? Or should NIL rules be decided at the state level, or even the school conference level?

What effects will NIL have on the student experience? Will students with NIL deals

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Navigating the Professionalization of Collegiate Athletics

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are achieved.

Additional guidance or framework would be beneficial for agents to navigate the NIL legislation more effectively. Zavian stated that additional education available to all parties is crucial. She also suggested that the NCAA could offer education opportunities and platforms aimed at addressing potential pitfalls that may not only hinder student-athlete eligibility but also harm the overall wellbeing of all stakeholders' long term as well. Consider the current practices issued to NCAA coaches on a yearly basis surrounding compliance guidelines and the mandate that they must pass these learning modules and exams to recruit among other opportunities. A similar platform could be made accessible

to all NIL affiliated parties. This may also better serve the agents who display higher levels of competency in that they, theoretically, would be more highly sought after and gain additional clients at a higher rate than those who are not as competent.

CONCLUSION

If it seems there are more questions than answers at this stage of the NIL legislation and its implementation, it is because arguably, that is the case. There will be some growing pains felt by all until some of the more intricate and *grey area* issues are addressed and full guidance is outlined for constituents to be able to reference. One of the most beneficial components that would offer immediate and effective assistance is increased educational

resources for all stakeholders to have readily available. Having additional education and information may help all stakeholders avoid immediate and long-term dangers that accompany this continually evolving landscape within collegiate athletics. As of now, it seems the approach is a trial and error or trial by fire learning platform for many that are involved.

Michael A. Ross is the Department Chair and an Assistant Professor of Sport Management at Shorter University and a PhD student at Troy University specializing in research related to youth sport studies, leadership, sport law, social media policies and procedures within athletics and participation motivations in sport and recreation.

Building NIL Business Takes Work, Strategy for Student-Athletes

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want athletes to build products (ie. merchandise) and sell them. There are digital apps like Cameo and Bluewire Podcasts. There are training apps like CoachUp.

We've got platforms in each of these categories to help athletes take initiative in a multidimensional way to build their NIL business.

Buddy is living this out in his potent combination of athletic performance and branding initiative. He's building his own NIL business from the ground up with its own identity and even a logo.

There's this misconception, "I'm going to make a logo." But what's the logo going to mean to people? How are you going to

get it out there beyond your profile pic on your Instagram? The logo has to stand for something, which you define through your performance and initiative.

Buddy built "Buddy Buckets" as a brand even before he had a logo. Then Syracuse Athletics agreed to license their marks to The Players Trunk where Buddy then is allowed to use the 'S' from Syracuse in the Buddy Buckets logo.

He is selling Buddy Buckets merchandise — that's one business item. He's wearing that merchandise when he does a Cameo, so people see it there. It's part of his podcast branding, and so on. Those are three different partners in a multidimensional business.

Athletes who seek to build a successful NIL business will take initiative in multiple ways like Buddy. In doing so, their DMs will begin to fill up, too. ■

Attorneys Consider Coping with NIL

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want to restrict her from using school IP in materials disseminated to the public, such as the school's logo, uniform, or mascot. Schools may be best served by limiting such use by way of a school policy or protocol. Or the school may allow the athlete some use by way of a limited license. Universities may also need to more carefully review their own sponsorship opportunities related to their sports teams to determine whether athletes' rights of publicity are implicated, e.g., should they loop in the athlete early and get an agreement on those rights. Obviously, these decisions will likely be best handled case-by-case and state-by-state even if a uniform nationwide right of publicity law for athletes emerges. ■

Tax and Other Issues to Consider Due to NIL

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choose to not graduate in order to focus on their business? To counteract this, should NIL deals for students be permitted only if the athlete is registered as a full-time student — and with a passing grade point average? What are the effects on Title IX? Can/should

schools permit only group licensing?

Although this article is limited in scope, each of the above highlighted issues deserve full consideration of the effects on both the athlete and their respective educational institution. ■