



NIL: States Act on Student-Athlete Compensation

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The right to control and to choose whether and how to use his or her identity for commercial purposes is recognized as an individual's "right of publicity." Name, Image, and Likeness or (NIL) are three elements that make up this legal concept.¹

The NCAA and the NIL Problem

The NCAA has long held the belief that student-athletes should not receive direct compensation for their participation and success in athletics. In the 1950s it began using the term "student-athlete" to prevent athletes from being viewed as employees.²

Student-athletes are considered amateurs, in part, so that there is no expectation that they will be compensated for their performance and involvement in college sports. Up until recently, the only way a collegiate athlete could be compensated was through a scholarship or stipend directly from a university or college.

The inevitable need to update its NIL policy has been creeping up on the NCAA for several years. In 2019, California adopted its own NIL legislation. Recently, the Supreme Court unanimously ruled the NCAA is in violation of antitrust laws by restricting the education-related benefits that student-athletes can receive.³ While the case does not directly deal with NIL, the ruling helps further open the door for a new policy.

Timeline of the NCAA NIL Policy

In October of 2019, the NCAA Board of Governors directed its three divisions to create flexibility in their NIL policies. On June 30, 2021, the divisions adopted an interim policy to suspend the NCAA's NIL rules for all incoming and current student-athletes.

"It does seem ... that schools are ... agreeing with competitors ... to pay no salaries to their workers who are making the schools billions of dollars on the theory that consumers want the schools to pay their workers nothing. And that just seems entirely circular and even somewhat disturbing."

**- Brett Kavanaugh,
Supreme Court Justice**

The NCAA adopted its own interim policy for NIL that took effect on July 1, 2021, and now, regardless of state, all NCAA student-athletes can benefit. The NCAA adopted this interim policy as they continue working with law-makers to come up with permanent federal legislation. The policy will remain in effect until the NCAA establishes new rules or Congress adopts new legislation.

What is the New NIL Policy?

The new NIL policy will allow all new and current NCAA student-athletes to market the use of their name, image, and likeness. College athletes will now be able to receive endorsements and sponsorships from third parties.

Specific provisions of the policy include:

- Individuals can engage in NIL activities that are consistent with the law of the state where the school is located. Colleges and universities may be a resource for state law questions;
- Individuals can use a professional services provider for NIL activities;

1. Right of Publicity Act. 765 ILCS 1075 §10 (1997).

2. Byers, W., & Hammer, C. (1995). *Unsportsmanlike Conduct: Exploiting College Athletes*. Ann Arbor, MI: University of Michigan Press.

3. *National Collegiate Athletic Assn. v. Alston*, 594 U.S. ____ (2021). https://www.supremecourt.gov/oral_arguments/argument_transcripts/2020/20-512_g314.pdf.

4. *Ibid*, p. 33.



- College athletes who attend a school in a state without an NIL law can engage in NIL activity without violation of NCAA rules related to name, image, and likeness; and
- State law and schools/conferences may impose reporting requirements.

Unless addressed by state law, or institutional or conference policy, a student-athlete is not required to report NIL activities to their school. NIL participation also does not impact a student-athlete's financial aid.

What are the NIL Restrictions?

- An NIL agreement may not be based on a quid pro quo;
- NIL compensation is contingent upon enrollment at a particular school;
- Athletic performance may enhance a student-athlete's value, but athletic performance may not be the "consideration" for NIL compensation;
- Institutions may not provide compensation in exchange for the use of student-athlete's name, image, or likeness; and
- Institutions are prohibited from engaging in pay-for-play or improper recruiting inducements.

Nebraska NIL Legislation and Policies

While the NCAA awaits action from Congress, several states, including Nebraska, have already introduced and passed legislation relating to NIL.⁵

In 2020, the Nebraska Legislature adopted LB 962, the "Nebraska Fair Pay to Play Act." The Act further allows collegiate athletes in Nebraska to be compensated for NIL and have the ability to sign with an agent licensed in the state of Nebraska.

Three universities in Nebraska have issued their own policies for student-athletes to further abide by.⁶ All three institutions require student-athletes to disclose their participation with NIL activities to their respective athletic departments. Institutional policies set out the categories of activities student-athletes can and cannot participate in. Some examples of prohibited categories are gambling, alcohol, tobacco, illegal substances, adult entertainment, and performance enhancing drugs.

How the NCAA's new policy and future legislation will affect NIL and the game itself are questions still to be answered. With the start of the fall collegiate athletic season and the ongoing review by Congress, these answers may be coming soon.



5. Currently, 28 states have adopted legislation regarding Name, Image, and Likeness. Twelve other states either have legislation pending.

6. University of Nebraska-Lincoln, Doane University, and Nebraska Wesleyan University