NCAA &
Name Image Likeness

“Updates & Anarchy in America!”

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Bar: CA & WA

Roadmap

- Introduction
- Name Image Likeness (NIL)
- Boosters/Collectives
- Transfer Portal (New…***New*** Changes)
- Roundup

Roadmap

- **“Working” Definitions:**
  - **Prospective Student Athlete (PSA)** - High School Athlete
  - **Student Athlete (SA)** - College Athlete
  - **Booster** - Financially Supports Athletic Program
  - **Collective** - Athletic Program Supporters Who Pool funds for Name, Image, Likeness Deals
- **Name, Image, Likeness (NIL)**
  - **Name** - Reggie Bush Signed Football
  - **Image** - Bryce Young (‘Bama QB) “Heisman House” Commercial
  - **Likeness** - Jerry West NBA Graphic Representation
- **Transfer Portal (TP)** - Set Window for SA to Announce Wish to Transfer Schools

Introduction

“Wow! Does he really Live here? I thought he just flew in for games.”

Fast Times at Ridgemont High

NCAA & NIL Introduction

- **History of College Sports, Endorsements & “Pay for Play”**
  - 1904 James Hogan, Yale. Endorsement Deal with JT Wilcox Cigarettes.
  - 1939 Un of Pittsburgh Player Strike for “Higher Pay”
  - 1948 College Sports “Sanity Code” Scholarship; No Payment or Endorsements
  - 2019 CA SB 206 “Name, Image & Likeness” —>1/1/23
  - 2021 FL SB 646 —> NIL 7/1/21
  - 2021 NCAA Interim NIL Policy, 7/1/21
  - 2022 NCAA Interim NIL Policy Guidance - 3rd Parties, 5/9/22
  - 2023 ??? Enforcement Actions: Collectives; NIL & TP

NCAA & NIL Introduction

- **Stats**
  - 2016 NCAA & CBS/Turner “March Madness” $8.8B
  - 2017 NCAA & ESPN Football Playoffs $7.3B
  - Drexel Un - DI Hoops FMV $265K/Year
  - 2022 NCAA Student Athlete Salary $0.00

NCAA & NIL Introduction

- **NCAA Student-Athlete Schedule**
  - Classes 15 Hours/Week
  - Study Hall 30 Hours/Week
  - Athletics 20 Hours/Week
- **= 65 Hour “Work Week”**

NCAA & NIL Introduction

- NCAA DI & DII: **$3.6B** in Athletic Scholarships/Year
    - **Div I**
        - 182K Student Athletes
        - 57% Athletic Aid
        - 350 Schools
    - DI - III: 500K Student Athletes

Name, Image, Likeness

Nick Saban, Bama “I mean, we were second in recruiting last year. A&M was first. A&M bought every player on their team. Made a deal for name, image, likeness.”

Jimbo Fisher, A&M “It’s despicable that we have to sit here…to defend the people of this organization, the kids, 17-year old kids and their families…some people think they’re God. Go dig into how ‘God’ did his deal…”

NCAA & NIL
Name Image Likeness

- **NCAA Interim NIL Policy, 7/1/21**

- DI, DII & DIII —> uniform policy; suspended NCAA NIL rules; all sports

- NCAA "Interim" Policy….until —>

  - Federal Legislation, or

  - New NCAA Rules Adopted

  - Schools & Conferences may adopt additional rules

NCAA & NIL
Name Image Likeness

- **NCAA Interim NIL Policy:**

  - Student Athlete (SA) - pursue NIL deals consistent with state law

  - SA in state with no NIL law - pursue NIL without violating NCAA NIL rules

  - SA - professional service providers for NIL (agent; brand manager; tax advisor; lawyer…)

  - SA - report NIL deals consistent with school, conference and state law

NCAA & NIL
Name Image Likeness

- **NCAA Interim NIL Policy Q&A, November '21:**

  - **Q: What is "Name, Image, Likeness" (NIL)?**
    A: Name - Reggie Bush Signed Football
    Image - Bryce Young (Bama QB) "Heisman House"
    Likeness - Jerry West NBA Logo Graphic

  - **Q: What is NIL activity?**
    A: Involves use of SA's NIL for commercial, promotion activity

  - **Q: What is NIL impact on Student-Athletes & Prospective Student Athletes (PSA)?**
    A: Same rules - PSA/SA. Can't be recruiting inducement or pay-for-play. CONSULT STATE LAW.

  - **Q: What are NIL deal reqs?**
    A: Quid Pro Quo (Speech <-> $$$); FMV; No Inducement or PFP

NCAA & NIL
Name Image Likeness

- **NCAA Interim NIL Policy Q&A, November '21:**

  - **Q: Can PSA/SA sign NIL deal with Booster?**
    A: Yes. Must meet state law & school policy. Can't be inducement or PFP.

  - **Q: Can international SA sign NIL deals?**
    A: Yes. But see "Designated School Officer" re: immigration status, tax issues. US Student & Exchange Visitor Program at SEVP@ice.dhs.gov
    **** Very Fluid Situation ****

NCAA & NIL
Name Image Likeness

- **NIL Deal Process**

  - NIL opportunity presented to SA and/or agent
  - Evaluate PFP; Inducement; School; State Law
  - SA reports NIL deals consistent with state law & school policy.
  - Cash That Check!
  - The End

NCAA & NIL
Name Image Likeness

- **NCCA Message? “You broke it; you bought it!”**
  - NCAA won’t monitor NIL state law compliance
  - Colleges = resource for state law questions
- **NCAA Enforcement:**
  - Improper Inducements (PSA/Transfers) &
  - Pay-For-Play
  - FMV
  - Agent Limits (NIL - Yes; Pro Contract No)

NCAA & NIL
Name Image Likeness

- **NCAA Interim NIL Policy "What a Mess"**
    - CA (SB 206; SB 26) 2019 —> 1/1/23
    - FL (SB 646, et al) —> 7/1/21
    - NCAA —> Interim NIL Policy, 7/1/21
    - AL (HB 404; Repealed HB 76)
        - 1st state to repeal its NIL law; ***too restrictive on recruiting!!!***

NCAA & NIL
Name Image Likeness

- **NCAA Interim NIL Policy "What a Mess"**
    - NCAA "Peace Out"
    - State Patchwork
        - NIL and Non-NIL (Amendments/Repeal)
        - High School & NIL
            - CA (CIF Section 212(3)(4))
- Disclosure vs Non-Disclosure Rules
- Level of School Involvement - NIL Deals
- NIL Federal (Stalled Proposals)

Booster$
&
Collective$

“The coaches are making millions of dollars and they’re coaching players whose parents live below the poverty line.”

John Shoop
Former Coach & NCAA Critic

NCAA & NIL Boosters/Collectives

- **NCAA Interim NIL Guidance - "3rd Parties", 5/22**

  - Ten-Month Update on Interim NIL Policy

    - Focus: NIL/Boosters Impact on School Choice & Transfers

    - *If* **"3rd Party"** Triggers Booster Status —>

      - Recruiting/Transfer Tampering

      - Undue Benefits (Housing; Cars; Pay Debts)

      - Pay for Play

NCAA & NIL Boosters/Collectives

- **NCAA Interim NIL Guidance - 3rd Parties, 5/22**
  - **Guidance re: PSA's & SA's:**
    - Boosters/3rd Parties
      - No Recruiting Conversations w/PSA, Family, Associates
      - NIL Can't be Guaranteed/Contingent on Initial/Continued Enrollment
      - Coaches Can't Play Matchmaker (PSA/Booster - Recruiting Lists/Transfer Portal)
      - NIL:
        - FMV
        - Not Enrollment-Based
        - Not PFP-Based

NCAA & NIL Boosters/Collectives

- **NCAA Interim NIL Guidance - 3rd Parties, 5/22**

- **NCAA DI Legislation**

  - **Athletic Dept** - can't represent PSA/SA (NCAA Bylaw 11.1.3)

  - **NLI** - before PSA signs, school can only publicly confirm recruitment (Bylaw 13.10)

  - **School** - responsible for impermissible recruiting by Booster (Bylaw 13.01.2)

NCAA & NIL Boosters/Collectives

- **NIL Policy Q&A, July ’22**

- **Booster:**

  - Promotes Program (allowed) vs. Tampering/Undue Benefits (not allowed)

- **Collective:**

  - If an individual or NIL entity’s (Collective) **sole or primary purpose is to engage in NIL activities with student-athletes** from a specific institution, **such individual or NIL entity is a booster.**

  - If an individual or NIL entity is **involved in recruiting activities for NIL purposes** (Collective engaging in recruiting activities), **such an individual or entity triggers booster status.**

NCAA & NIL Boosters/Collectives

- **NIL Policy Q&A, July ’22**

- **Q: Collective Contacts PSA for recruiting and promises NIL deal after enrollment. Allowed?**
  A: No. Recruiting violation and NIL deal can’t be contingent on enrollment.

- **Q: Collective contacts PSA’s uncle, promises roster spot and verbally agrees to NIL deal & percentage of NIL deal payment to uncle. Allowed?**
  A: Indirect contact w/PSA (family member; associate) is a recruiting violation. And NIL deal can’t be contingent on enrollment.

NCAA & NIL Boosters/Collectives

- **NIL Policy Q&A, July ’22**

- **Q: Coach has relationship with Booster. Booster wants Coach to “pitch” PSA on NIL deal to top Recruit. Allowed?**
  A: No. Coach/Staff can’t communicate with PSA on behalf of Booster/Collective.

Q: Is Coach allowed any communication with Collective?
A: Yes. But coach can’t be matchmaker or provide Recruiting or Transfer Portal list to Collective.

Q: Can Coach promote current NIL deals with enrolled student-athletes to PSA’s?
A: Yes. Factual information on existing deals can be discussed.

NCAA & NIL Boosters/Collectives

- **NIL Policy Q&A, July ’22**

“Recruiting Conversation”

Booster/Collective —>

- No communication with PSA/Family/Associates for **“recruiting purposes” or “enrollment.”**

- No Communication with SA/Family/Associates for **“transfer purposes.”**

- **“This prohibition extends to any individual *(Former or Current Student Athlete)* working on behalf of the collective.”**

NCAA & NIL Boosters/Collectives

- **NIL - Collective Formation**
  - **Non-Profit 501(c)(3)**
    - SA picks charity
    - Collective pays SA for services
    - Donations - Tax Deduction
  - **For Profit**
    - Subscription; Sponsor; Donations….You Name It!

NCAA & NIL
Boosters/Collectives

- **Booster/Collective Summary:**
    - Collective = Booster Status
        - Recruiting/Transfer Inducements
        - Undue Benefits
        - Pay for Play
        - “Quid Pro Quo” (Services/Payment YES vs. Enrollment/Payment NO)
- Title IX (Male/Female Funding)
- Impact on Non-Rev Sports
- NCAA Inquiries - BYU; OR; Miami…

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- "The enforcement staff is ***actively investigating potential abuses of NIL transactions*** and we'll allege any substantiated concerns as soon as possible…***our focus*** is not on targeting student-athletes, but rather ***the actors who pose a threat*** to the integrity of college sports."

NCAA email to Schools

August, 2022

Transfer Portal

“Never let school get in the way of an eduction.”

Mark Twain

NCAA & NIL
Transfer Portal

- **Transfer Portal**
  - One-Time Transfer Exception
    - No Need to Sit Out One Academic Year
- **Amendments 2022-23 School Year**
  - **Transfer Portal Window**
    - **Additional Protections**
  - **Post-Grads**

NCAA & NIL
Transfer Portal

- **DI One-Time Transfer Criteria**
  - Four-Year School
  - Academic Eligibility (Current & New)
  - No Prior Transfer (but new waivers in 2022)
  - Written Request within Transfer Portal Window
  - **SA & New HC Certification:**
    - **No Direct/Indirect Communication Prior to Entering Transfer Portal**

NCAA & NIL
Transfer Portal

- **NEW Transfer Portal Rules (22/23 School Year)**
- May 1/July 1 Deadline Replaced by 60-Day Transfer Window
    - Fall = 45 Day Window + 15 Day Window
    - Winter = 60 Day Window
    - Spring = 45 Day Window + 15 Day Window
- **Fall Sports - Football**
    - 45-Days (Day After Championship Selections) + 15 Days
        - 45 Days: 12/5/22 - 1/18/23 +
        - 15 Days: 5/1/23 - 5/15/23
-

NCAA & NIL
Transfer Portal

- **NEW Transfer Portal Rules (22/23 School Year)**
- **NCAA Press Release, 8/31/22**
  - **Financial Aid Security**
    - Financial Aid Thru Graduation (Unless Transfer Again or Go Pro)
  - **New Exceptions (Extra 30-Days to Enter Transfer Portal)**
    - HC Change, or
    - Athletics Aid Reduced/Canceled
- **New Waivers (Multiple Transfers w/No Penalty)**
  - SA “Well Being” or
  - Circumstances Outside SA’s Control
- **Rejected Proposal - “Multiple” Transfers; TBD**

NCAA & NIL
Transfer Portal

- **NEW Transfer Portal Rules (22/23 School Year)**

- **NCAA Press Release, 9/21/22**

  - **Post-Graduate** SA's w/Athletic Eligibility

    - Exempt from 60-Day Transfer Portal Window

      - Transfer Portal Deadline

        - Fall & Winter - May 1

        - Spring - July 1

NCAA & NIL
Transfer Portal

- **General Info:**

  - **Q: Prior Transfer and Wants to Transfer Again?**
    A: Sit Out One Academic Year Unless (1) Sport Discontinued or **(2) Waivers "Well Being" or "Circumstances Outside of Control"**

  - **Q: How to Confirm Academic Eligibility?**
    A: Current Compliance Admin Before TP. New School Academics.

NCAA & NIL
Transfer Portal

- **Recruiting & Impermissible Communication:**

  - **Q: Is SA in TP automatically eligible for new school?**
    A: No. Entering TP allows communication by SA and prospective schools' athletic programs.

  - **Q: What result if "Impermissible Communication" with coaches?**
    A: Direct/Indirect Communication SA <-> Coach not allowed until in TP. Includes Family & Associates of SA. SA Athletic Eligibility at Risk.

NCAA & NIL
Transfer Portal

- **Other One-Time Transfer Info:**

  - **Q: Does One-Time Transfer apply to all sports?**
    A: Yes.

  - **Q: May current school "object" to transfer?**
    A: No. ***Written Support Requirement*** removed.
    Current/New schools must cooperate (TP & Academics)

  - **Q: Does One-Time Transfer apply to SAs transferring from two-year schools?**
    A: No. 4 <-> 4; Separate Two-Year Rules

NCAA & NIL
Transfer Portal

- **Other One-Time Transfer Info:**

  - **Q: Who can add SA into TP?**
    A: Current Compliance Dept. DI: Two-Business Days.
    Portal Info: NCAA ID; School; Sport & Email

  - **Q: When can communication start with prospective coaches?**
    A: After SA info appears inTP

  - **Q: What's allowed before SA's transfer notice?**
    A: Communication w/new school's FA/Admissions.
    Contact w/other SA's but NOT at coach's request.

NCAA & NIL
Transfer Portal

- **Notice of Transfer "Impact"**
  - Playing Time
  - Athletics Aid - Future
  - Roster Sport ("Bye Bye")

NCAA & NIL
Transfer Portal

- **Transfer Portal Case Study:**

  - Johnny Utah **("Point Break")** attends Ohio State as Frosh QB & practices with football team. Cut before first game.

  - At end of academic year Johnny wants to transfer to UCLA and play football.

  - Q: Does Johnny need to comply w/Notice of Transfer Rules and Window?
    A: Yes. Johnny practiced w/Ohio State = member/SA.

Roudup
&
What's Next

"If you can dodge a wrench, you can dodge a ball."

Patches O'Houlihan
Dodgeball

NCAA & NIL Roundup

- **Rapid, Volatile Changes Ahead:**
  - NCAA; States; Feds; Schools; Coaches; Agents; Boosters
  - **NCAA Updates**:https://www.ncaa.org/sports/2021/2/8/about-taking-action.aspx
  - CA: In Re College Athlete NIL Litigation, USDC 4:20cv3919 (D.N.Cal)
    - Pay-For-Play
    - Recruiting

NCAA & NIL Roundup

- **Rapid, Volatile Changes Ahead: Unintended Consequences & Black Swans**
    - Place Your Bets —>
        - **Jail**
        - Unionize and/or Revenue Share
        - NIL: Pay-To-Play and/or Recruiting
        - **NIL + TP Impact (Multiple Transfers?)**
        - **Education:**
            - Taxes (Multi-States; Budgeting; Reporting)
            - Contracts (Agent Fees; NIL - “In Perpetuity”; Exclusivity; Categories)
    - Collectives (Direction & Control)
    - Locker Room Impact
    - Grades & Graduation Impact
    - In-Season Commitments; Road Games
    - **High School & NIL (State Shopping)**

NCAA & NIL Roundup

- **Sports Law & Biz Podcasts:**
  - ***Game Changer*** (NCAA NIL & TP)
  - ***The Business of Sports*** (Sports Biz & Law)
  - ***Youth Inc.*** (Student-Athlete Development)

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