

Ruling Gives Student Athletes NIL Opportunities, But Questions Remain



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What do Kool-Aid, PetSmart, Lamborghini, Subway and Dollar Shave Club all have in common?

They all have name, image, and likeness, or NIL, deals with collegiate student-athletes. Just a few years ago, this would have been impermissible due to NCAA rules and regulations. Yet, in the last year, the landscape of collegiate sports has drastically changed, in large part due to rule changes

surrounding the usage of college athletes' NIL.

For many decades, amateurism was at the heart of collegiate sports. Simply put, the NCAA strictly enforced rules against college athletes being paid for endorsements, autographs, sponsorship deals, social media posts, or anything of the like. But in 2019, the amateurism conversation for college athletes began to shift; states such as California, Florida and Georgia signed into law legislation allowing college athletes to be paid for use of their NIL. Then, in June 2021, the Supreme Court called an audible, unanimously ruling against the NCAA in *NCAA v. Alston*, where the court found that the NCAA could not limit education-related payments to student-athletes and set the field for further legal challenges to rules that limit athletes' compensation.

The Alston ruling prompted the NCAA to suspend NIL rules for all collegiate student-athletes and adopt an interim policy that allowed allow student-athletes to receive compensation in exchange for the use of their NIL, deferring to the states to set their own rules and regulations. Have you ever thought about paying your favorite collegiate athlete to make an appearance at your company's holiday party or sign your child's cast so they could be the coolest kid in school? The Alston ruling now means you can. In the first season of NIL, multiple student-athletes have amassed a total NIL valuation of over a million dollars. Further, the total amount spent on NIL deals to date is over \$900 million. This change in college athletics ushered in a new era of collegiate sports, where athletes can monetize their NIL without risking their eligibility.

For Oklahoma collegiate athletes, the Oklahoma's Student Athlete Name, Image, and Likeness Rights Act can be found in Title 70, Section 820-21 of the Oklahoma Statutes. Broadly, the act states that student-athletes may profit off their NIL, but compensation may not be provided in exchange for an athlete's performance or participation in collegiate athletics

or as an inducement to attend a particular institution. Further, student-athletes are required to disclose NIL deals to their school within 72 hours of entering in the deal or before the athlete's next athletic event, whichever occurs first. Finally, athletes may not enter into NIL deals that have conflicting provisions with any school or team contractual obligations.

Oklahoma high school athletes also are beginning to see NIL opportunities. The Oklahoma Secondary School Activities Association recently approved a set of NIL guidelines. These guidelines allow students to pursue NIL deals without endangering their amateur status, so long as the deal is not dependent on the student's athletic performance or success, does not act as an incentive for attending a certain high school, and does not come from the school or an agent of the school.

To assist with this change in NIL legislation, athletes are now able to obtain professional representation to assist with NIL deals. Student-athletes, as well as businesses and individuals looking to compensate a student-athlete for their NIL rights, should consult with a legal professional prior to making a NIL deal to review the terms of any proposed NIL agreement to avoid unforeseen issues, such as exclusivity clauses or other restrictive terms that could affect a student-athlete's eligibility. Consulting with a legal professional prior to signing a deal also will ensure all parties, including institutions, student-athletes and parents, know exactly what terms are being agreed upon.

Nevertheless, questions remain regarding the short- and long-term implications of this major shift in amateurism rules. Will Congress provide a uniform federal law to clarify and simplify? Will NIL opportunities have tax consequences that result in the loss of need-based funds for student-athletes? Will the level of institutional involvement lead to Title IX questions regarding differential treatment between male and

female athletes? Individuals and institutions must remain conscientious of and work to understand applicable rules and regulations, as well as the changing landscape of NIL, to hit their NIL deals out of the park.

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