

# July 1st Marks the First Day of School for Student-Athletes Seeking to Exploit NIL Rights

## The Bottom Line

- As a new era of collegiate sports marketing begins, sponsors and student athletes will need to navigate a patchwork of state, college and conference rules to ensure compliance with eligibility requirements.
- For those that do, the exploitation of NIL rights by collegiate athletes offers an expansive new marketing opportunity and means of connecting with collegiate audiences.

The National Collegiate Athletic Association (NCAA) has waved the white flag and surrendered on the issue of collegiate name, image and likeness (NIL) rights. This comes less than two weeks after the U.S. Supreme Court dealt a resounding blow to the NCAA on the subject of educational benefit limitations in the unanimous *Alston v. NCAA* decision (*Alston*). Framed as an interim policy, the NCAA has deferred to state legislation and individual college policies, and will allow student-athletes to earn money from the exploitation of their NIL rights for the first time.

The resulting opportunities for student-athletes are expected to be substantial for both revenue sports such as football and men's basketball and non-revenue team and individual sports.

## States Fed Up

Beginning with [California's Fair Pay to Play Act in 2019](#), frustration with the slow pace of change at the NCAA pushed state legislatures to introduce legislation allowing student-athletes to enter into contracts to exploit their NIL rights without forfeiting their eligibility. Alabama, Florida, Georgia, Illinois, Kentucky, Mississippi, New Mexico, Ohio, Oregon and Texas each had legislation scheduled to take effect on July 1, creating a firm deadline for the NCAA to take action or risk implementation of inconsistent and incompatible rules across states and schools.

The NCAA tasked each division with [developing rules](#) for implementation of NIL rights. Yet, in the shadow of the Supreme Court's hearing of the *Alston* case, the NCAA suspended those efforts, seemingly pinning its hopes on a federal legislative solution. But, despite more than half a dozen bills introduced in the U.S. Senate and House of Representatives, Congress appears no closer to reaching agreement on federal NIL legislation.

## The NCAA Abdicates

On the day before state legislation was scheduled to take effect, and with the *Alston* decision casting doubt on the enforceability of any unilaterally imposed rules, the NCAA adopted a uniform interim policy suspending NCAA name, image and likeness rules for all incoming and current student-athletes in all sports in all divisions.

The interim policy contains the following guidance:

- 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.
- College athletes who attend a school in a state without an NIL law can engage in this type of activity without violating NCAA rules related to name, image and likeness.
- Individuals can use a professional services provider for NIL activities.
- Student-athletes should report NIL activities consistent with state law or school and conference requirements to their school.

As a result, the rules governing NIL rights for collegiate athletes will depend on which school a student attends, which conference they are in and the state where the school is located. This is the result the NCAA repeatedly stated was untenable.

The NCAA also clarified that these guidelines will apply to prospective student-athletes still in high school. The NCAA does not take any position on high school athletic eligibility, so high school student-athletes will need to confirm high school eligibility rules in their state and school district.

## Collegiate Sports Marketing Poised to Change Forever

The change in the calendar from June to July and the implementation of the NCAA's hands-off interim policy has resulted in an immediate rush to cash in on the changing NIL landscape.

Recent examples include:

- Athletes in Florida signed traditional endorsement deals with companies such as College Hunks Hauling Junk.
- A volleyball player in Nebraska launched a line of branded merchandise, while a pair of basketball players launched a podcast sponsored by a local tavern.
- An offensive lineman from Marshall University will perform at country music venues under his real name (previously prohibited by the NCAA).

These deals, announced this week, demonstrate the variety of ways in which NIL rights will be exploited and point to the tremendous opportunities for student-athletes and sponsors to leverage these rights.

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### **For More Information**

Please contact the attorneys listed below or the Davis+Gilbert attorney with whom you have regular contact.

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