



Northern Illinois University

Name, Image and Likeness (NIL) A Briefing

Board of Trustees Meeting
December 7, 2023

Overview



- NIL refers to the right of college athletes to profit from the use of their own names, images and likeness.
- Prior to 2021, NCAA rules prohibited college athletes from profiting from use of their NIL.

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- NIL is currently regulated through a patchwork of state laws and an NCAA NIL interim policy that defers to state law where applicable, and a reaffirmation of its commitment to prohibiting impermissible inducements and pay for play.
- 32 states (including Illinois, 110 ILCS 190/5) have passed NIL laws.
- 10 federal bills have been introduced, but currently, there is no federal law regulating NIL.

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NCAA Interim Policy:

- What is prohibited under the new policy?
- NIL agreement without quid pro quo (e.g., compensation for work not performed).
- Student-athlete NIL agreements should include the expected NIL deliverables by a student-athlete in exchange for the agreed upon compensation and student-athletes must be compensated only for work actually performed.

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- NIL compensation contingent upon enrollment at a particular school (e.g., guaranteeing a particular NIL opportunity upon enrollment).
- Compensation for athletic participation or achievement. Athletic performance may enhance a student-athlete's NIL value, but athletic performance may not be the “consideration” for NIL compensation.
- Institutions providing compensation in exchange for the use of a student-athlete's name, image or likeness.

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Federal Bipartisan Legislation:

College Athletes Protection and Compensation Act

- Establish NIL standards and protect athletes' economic opportunities.
- Establish a medical trust fund & cover injured athletes' out-of-pocket costs.
- Prioritize athletes' educational outcomes.
- Safeguard athletes' health and wellness.
- Bring transparency back to college athletics.
- Ensure gender parity in tournaments.

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NIL Deals

The terms of each NIL differ by athlete, but the most common NIL deals are the following:

- Endorsement Deals;
- Sponsorship Deals;
- Appearance Deals; and
- Social Media Deals.

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- Average value of all NIL transactions: \$1,815.
- Median value of all NIL transactions: \$53.
- Average value of Power 5 NIL deals: \$2,144.
- Average value of Non-Power 5 NIL deals: \$558.
- 61% of the NIL transactions are social media deals.

(INFLCR, Year 1 Report, July 2021-June 2022)

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- Average transactional value for women's sports: \$1084.
- Average value of women's gymnastics transactions: \$7,054.
- Average value of football transactions: \$3,396.

(INFLCR, Year 1 Report, July 2021-June 2022)

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Top 5 Sports for NIL Transactions (Power 5):

- Football;
- Men's Basketball;
- Women's Gymnastics;
- Swimming/Diving; and
- Women's Basketball.

(INFLCR, Year 1 Report, July 2021-June 2022)

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Top 5 Sports for NIL Transactions (Non-Power 5):

- Men's Basketball;
- Football;
- Women's Basketball;
- Women's Soccer; and
- Women's Golf.

(INFLCR, Year 1 Report, July 2021-June 2022)

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Challenges:

- International Students.
- The Rise of Collectives.
- Title IX.

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- Collectives are the term most used in the NIL space to describe a third-party business entity created and/or operated to pool revenue to fund NIL opportunities for student-athletes at the collective's associated school.
- They can be organized by boosters, alumni, businesses or any other group of interested parties.

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NIL collectives can provide a variety of benefits to athletes, including:

- Financial compensation for NIL activities.
- Access to marketing and branding opportunities.
- Assistance with NIL compliance.
- Networking opportunities with other athletes and supporters.
- Currently, 205 NIL collectives operating in the United States and the number is growing.
- 92% of Power Five schools have at least one collective or are in the process of forming one.

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- Collectives are typically either businesses, non-profits or subscription-based platforms.
- Collectives may sponsor or host fan-funded programs designed to provide experiences from tickets, autographs and memorabilia, to meet-and-greets, virtual events, dinners and trips.

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Transfer Portal:

- The portal was designed to simplify the process of players unhappy at their current schools finding a new program and a new coach.
- It consolidated all the players who wish to transfer and their contact information into one place, providing more transparency in the process and helping ensure compliance.

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- The NCAA implemented the one-time transfer rule in 2021. This granted all Division I athletes the ability to transfer once to another school and be immediately eligible to play.
- A coach is not allowed to promise specific deals or dollar amounts as part of the recruiting process.
- Both schools and student-athletes must comply with state NIL laws.
- NIL opportunities can have a huge impact on where a player winds up.

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Game Changing Litigation:

House v. NCAA

- The federal antitrust lawsuit, filed in 2020 in California, is seeking damages for athletes who didn't benefit from NIL rules because they played before the NCAA enacted them.
- The case also argues that the definition of NIL should be much more broad: Broadcast deals, game promotions, and school apparel contracts would be considered part of NIL because athletes are featured in them.

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NLRB case against USC, Pac-12 and NCAA

- On Tuesday, the Los Angeles region of the NLRB will begin virtual pre-trial hearings for a case first filed in 2022 by an athlete advocacy group called the National College Players Association (NCPA) against USC, the Pac-12 and NCAA. The case is an “unfair labor charge” over the misclassification of athletes.
- If the NCPA wins, all Division I basketball and FBS football players would have to be reclassified as employees.

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- The NLRB could even claim public school athletes are subject to its ruling even though it only has jurisdiction over the private sector. That's because of the joint employer doctrine which suggests that multiple organizations can be employers of the same group of people at the same time.
- If all conferences and the NCAA have similar relationships to their football and basketball players, the rule could apply. The NLRB recently issued a new definition for its joint-employer doctrine, which could bode well for athletes in this case.

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- On November 1, 2023, twin recruits of the Chicago State men's basketball team, Matt and Ryan Bewley, filed a lawsuit in Illinois federal court against the NCAA over their denied eligibility after having played for Overtime Elite.
- In 2020, the sports media company Overtime established a men's high school professional basketball team called Overtime Elite, which allowed players aged 16-18 to play as well as receive schooling, the ability to profit off NIL deals and a salary. It also offered players who wanted to play NCAA basketball the option to receive scholarships, rather than salaries.

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- The NCAA's decision was based on three factors, according to court documents: Players received compensation that “exceeded actual and necessary expenses,” they played on a team that was considered professional and they played against athletes who considered them professionals. (Court documents noted that other athletes who had played on Overtime Elite have been granted eligibility to play NCAA basketball).

Questions



The Office of General Counsel for Northern Illinois University

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