

Duke University Settles Groundbreaking NIL Lawsuit Against Quarterback

Duke University settled its lawsuit against star quarterback Darian Mensah on January 27, slightly over a week after filing it. The swift settlement concluded a case that could have resolved fundamental legal questions facing college sports in the *post-House era*, including the enforceability of name, image and likeness (NIL) contracts against transferring student-athletes and whether NIL contracts are actually disguised employment relationships that constitute prohibited pay-for-play schemes.

The *Duke v. Mensah* lawsuit exposes the inherent contradiction at the heart of modern college sports—schools are entering into lucrative, multiyear contracts with student-athletes while simultaneously contending that those same athletes are not employees. This tension between contractual control and educational freedom and between pay-for-play and amateurism principles could play a significant role in shaping college athletics for years to come.

The Mensah transfer dispute

Quarterback Darian Mensah signed an NIL contract with Duke that was set to expire Dec. 31, 2026. In January, Mensah announced his intent to transfer. Duke responded by filing a lawsuit alleging breach of contract, arguing that Mensah's NIL agreement explicitly prohibited him from transferring to another school or entering into an NIL deal with a competitor institution during the contract term.

Duke's lawsuit was noteworthy. While schools have been reluctant to sue their own athletes over contract disputes due to recruiting implications and public relations concerns, Duke argued it had no choice but to seek legal recourse to protect the integrity of its contracts. The university claimed it had entered into a binding

agreement for the exclusive rights to license Mensah's NIL and that his departure would cause irreparable harm.



The case settled quickly, reportedly involving Mensah paying a significant buyout to Duke—likely in the range of millions of dollars—to exit the remaining term of his contract. The settlement left unresolved the critical legal questions the case raised, however.

Key legal issues

The student enrollment defense. Mensah could have argued that regardless of his NIL contract, Duke cannot legally block a student from transferring to another institution because student enrollment is an inherently voluntary relationship. For example, defensive back Xavier Lucas left the University of Wisconsin for the University of Miami without entering the transfer portal by plainly enrolling in classes at Miami.

While Mensah signed a contract with Duke for the use of his NIL rights, he remained a student first, free to matriculate at any other school that admits him. This defense raises the question: Can a contractual relationship for publicity rights override students' fundamental rights to choose where to pursue their education?

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The employment question and NIL fiction. Perhaps the most significant issue is whether NIL contracts such as Mensah's are actually disguised employment relationships that constitute prohibited pay-for-play schemes. Duke emphasized in its complaint that Mensah was not being paid to play football and that his NIL compensation was not contingent on athletic performance. The university claimed it was simply paying for an exclusive license to use his publicity rights, a permissible transaction under NCAA rules. By suing Mensah to prevent him from transferring to a rival football program, however, Duke arguably contradicted its own position. The lawsuit revealed that Duke valued Mensah because he is a talented quarterback who could strengthen a competitor, suggesting the contractual relationship was more about on-field labor and retaining a key player than about marketing rights.

This contradiction exposes the fundamental tension in modern college athletics: If Mensah were recognized as a Duke employee who signed a multiyear employment contract, the university would have stronger legal grounds to enforce the agreement and block his transfer. For example, employment contracts can include noncompete clauses. But college athletes are currently not recognized as employees, creating a legal gray area where schools want to enforce employment-like restrictions without granting employment protections or benefits. The case raises questions about whether schools are using NIL contracts as a workaround to implement de facto employment relationships—complete with multiyear terms and noncompete provisions—while avoiding the legal obligations and collective bargaining requirements that come with employee status.

Why the parties settled so quickly

The rapid settlement, just over a week after filing, suggests both parties recognized the risks of litigation. For Duke, a court ruling could have undermined its position that Mensah was not an employee, potentially exposing the university—and other schools—to employment-related claims from its athletes. For Mensah, losing in court could have meant being bound to Duke or facing significant damages, and the buyout allowed him to pursue his preferred transfer destination while providing Duke with compensation.

It also appears that neither party wanted to set any binding precedent. A loss for Duke might have signaled that NIL contracts are unenforceable against transferring athletes, rendering them essentially meaningless. A loss for Mensah might have established that schools can hold athletes to multiyear deals, chilling athlete mobility. By settling, both sides avoided these worst-case scenarios but left the broader legal framework unresolved.

The importance of this settlement

While the settlement resolved the immediate dispute, its broader significance lies in what it reveals about the fragility of the current system. This case suggests potential vulnerabilities in NIL contracts; the potential for students to negotiate buyouts suggests contracts may function more like guidelines than as binding obligations. This fundamentally undermines contract stability in college athletics.

Moreover, the case exposed the inconsistency between conference approaches. The Big Ten has standardized contracts administered through the conference office with meaningful buyout provisions—as seen when University of Washington quarterback Demond Williams announced his intent to transfer just days after signing his contract but ultimately returned to Washington because the buyout made leaving prohibitively expensive. The Atlantic Coast Conference (ACC), by contrast, has no such standardization, leaving individual schools to negotiate deals with less leverage.

The *Duke v. Mensah* case signals that in the absence of employee status and collectively bargained transfer restrictions, schools might increasingly turn to the threat of litigation and buyout clauses as leverage. But litigation is costly, time-consuming and potentially damaging to recruiting and institutional reputation.

Takeaways for stakeholders

For student-athletes: Understand that signing NIL or revenue-sharing contracts does not necessarily lock you in permanently. Buyouts are negotiable, and schools may be reluctant to pursue costly litigation. Be prepared, however, for potential legal action and significant buyout demands if you seek to transfer before your contract expires. Contracts are not meaningless, but they are also not absolute barriers to mobility.

For NIL collectives, universities and conferences:

Contract enforceability is likely to remain a complex issue. Duke's lawsuit showed that schools are willing to sue to protect contract integrity, but the rapid settlement suggests this approach has significant limitations—litigation is costly, generates negative publicity and can damage recruiting. Without employee status, your leverage could come in the form of financial penalties through buyout provisions and the threat of legal action, but these tools must be used carefully.

Overall, the *Duke v. Mensah* case underscores the need for structural reform and standardization in college sports. Unless athletes are recognized as employees with collectively bargained transfer rules or until clear legal precedent establishes the enforceability of NIL contracts against transferring students, the current system seems likely to face continued uncertainty.

Looking forward

Duke v. Mensah may not be the last case of its kind. As revenue-sharing NIL agreements become more common following the *House* settlement, similar scenarios involving star athletes attempting to transfer while under contract could emerge. When they do, the same fundamental questions—whether NIL deals are enforceable against transferring athletes and whether these contracts disguise employment relationships—will be asked again.

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