

Chicago Daily Law Bulletin®

VOLUME 168, NO. 127

LAW BULLETIN MEDIA

College athletes sprint to cash in on name, image, likeness ventures

University of Miami Hurricanes quarterback D'Eriq King is showing what's possible now that the National Collegiate Athletic Association has lifted its ban on college athletes making money off their own names and images.

The college football standout has signed endorsement deals with a diverse array of businesses, including College Hunks Hauling Junk moving company, Murphy Auto Group, and a Miami waterfront bar. King is also selling clothing including T-shirts, sweatshirts, jackets and hats with his personal logo in his own online store. In addition, he is a co-founder with Florida State quarterback McKenzie Milton of Dreamfield Sports, a platform that books student-athletes for speaking engagements, meet-and-greets, autograph signings and other events.

Permitting student-athletes to monetize their own names, images and likenesses, or NIL, opens a new world for more than 400,000 NCAA athletes and those who can help them achieve their financial goals. Brands, platforms, agents, schools and financial advisers are jumping at the chance to work with student-athletes on a wide variety of ventures.

These rapidly developing new partnerships present almost unlimited opportunities — and a host of practical and legal concerns — for this emerging industry.

The NCAA previously barred student-athletes from earning money off their own NIL to remain eligible to participate in NCAA college athletics. The organization always emphasized they are students first and athletes second.

But effective July 1, the NCAA adopted an interim policy suspending previous rules prohibiting the commercialization of a student-athlete's NIL. The interim policy allows student-athletes to receive NIL-related compensation from third-party endorsements and other business activities without jeopardizing their NCAA eligibility, provided that the athletes follow the requirements prescribed



SPORTS MARKETING PLAYBOOK

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by their states' laws and their schools' NIL policies.

The NCAA made its long-awaited policy shift during a time when numerous states have enacted laws explicitly providing NIL rights to student-athletes and permitting them to engage in professional representation. The shift was supported in part by the U.S. Supreme Court's June 21 ruling in *NCAA v. Alston* that the NCAA could not bar its member schools from providing student-athletes with various education-related benefits.

The NCAA spells out its new rules on its website. Under the interim policy, student-athletes may engage in any NIL activities that are consistent with the law of the state where the school is located and their school's rules. (Athletes who attend a school in a state without an NIL law may engage in NIL activity without violating NCAA NIL rules.) Colleges and universities may serve as resources for state-law questions. Athletes may also use professional service providers for NIL activities. State law, schools and conferences may

also impose reporting requirements.

Subject to state law, the interim policy prohibits NIL agreements where student-athletes are compensated for work not performed and NIL compensation offers contingent on enrollment at a particular school. Also barred is NIL compensation based on a student-athlete's achievement; while athletic performance may enhance a student-athlete's NIL value, performance may not be the basis for NIL compensation. The NCAA's ban on pay-for-play and improper recruiting inducements remain unchanged.

In the past, a college athlete's fame, connections or number of social media followers meant little in terms of earning power — at least until they graduated or left school. But those intangibles can now provide added value on the NIL market.

A handful of college athletes are already securing big paydays. For instance, University of Alabama quarterback Bryce Young reportedly has endorsements totaling nearly \$1 million with sponsors including Cash App. The fact that Young is making a name for himself as QB right out of the gate — he tied a university record by making 10 touchdown passes in his first three games — can only help his future earning prospects.

Hercy Miller, a freshman basketball player for Tennessee State University, reportedly will be paid \$2 million over four years to be the brand ambassador for Web Apps America. It probably didn't hurt that the Tigers point guard is the son of rapper and record label executive Master P.

Twin sisters Hanna and Haley Cavinder, who play basketball for Fresno State, are both leading scorers for the Bulldogs as well as TikTok stars with more than 3.4 million followers. It's a combination made in brand heaven, and the twins wasted no time signing their first endorsement deal with Boost Mobile, just minutes into the day the NCAA officially lifted its ban. Add in their second partnership with Six Star Pro Nutrition and projected income generated from their millions of

social media followers, and the Cavinders reportedly could make up to \$3 million a year.

Colleges and universities are providing support and financial education to help student-athletes navigate a flood of business opportunities and publicity. For example, the University of Nebraska launched its #NIL-braska initiative in June, which includes a program to teach all Cornhusker student-athletes about financial literacy, entrepreneurship, brand building and networking. Student-athletes can also get assistance from the university's business and law school to create their own companies, and can pitch Nebraska's Husker Venture Fund to receive funding.

The University of Arkansas created an office of Athlete Brand Development in its athletic department and hired a senior associate athletics director dedicated to Razorback NIL initiatives, who oversees the school's "Flagship" program that offers student-athletes education and internal and external resources to maximize their NIL opportunities. St. John's University recently developed a minor in sports leadership and branding to help both student-athletes and non-athlete students pursue careers in sports after graduation. Courses include a class in consumer protection law focusing on NIL regulations.

Television ratings company Nielsen has also launched a new solution, the Nielsen Impact Score (NIS), that participating schools can use to recruit student-athletes by demonstrating the marketing impact of their athletic teams. NIS includes three measures: the national television exposure the team provides its student-athletes; the impact on and engagement with the local market fan base the team has; and the program's social media engagement.

It should come no surprise, however, that

in the absence of a nationwide NIL policy, practical and legal issues are emerging.

The existing policies and brand partnerships individual colleges and universities have can limit or conflict with the athletes' opportunities. Some schools have strict guidelines on the use of intellectual property such as logos and mascots. Many also prohibit student-athletes from endorsing alcohol, tobacco or gaming. Additionally, schools may bar student-athletes from entering into deals with the school's corporate sponsors or engaging with the brands' competitors.

For example, if a school has an agreement with Nike, the biggest college uniform sponsor, deals with Nike may be off limits to players — but so may be partnerships with Nike's competitors. It's unclear whether student-athletes are allowed to partner with the NCAA's own corporate sponsors, which range from AT&T and Capital One to Pizza Hut, UberEats and Wendy's.

The NCAA's current NIL policy is meant to be a temporary measure until a federal law is enacted, but no predictable timeline exists for this legislation. Several federal NIL bills have been introduced to standardize NIL regulations, but contentious issues include efforts to classify student-athletes as school employees and the NCAA's bid for the inclusion of an antitrust exemption.

Meanwhile, more than 30 states have either passed their own NIL laws or have one in the works. Schools in states without NIL laws may develop their own policies as long as they do not violate the NCAA's policy.

The interplay between schools' varying policies and the different state laws on NIL agreements also could have an impact on student-athletes who decide to transfer schools, international student-athletes whose immigration status could be affected by any NIL income, and high school students who are

recruited to play in college and want to exercise their NIL options as soon as possible.

Group licensing deals for student-athletes raise the issue of union representation. Unlike most professional athletics, college sports do not have unions. In the new NIL era, some schools are arranging group sponsorship deals on behalf of their athletes. The Ohio State University, University of Alabama and University of North Carolina are partnering with the Brandr Group, a brand management and licensing agency, to allow student-athletes to earn money from jerseys and other merchandise outfitted with school logos and their names or likenesses.

In addition, student-athletes are seeking out innovative money-making ventures that are backed by little legal guidance. For example, University of Oregon defensive end Kayvon Thibodeaux has issued his own cryptocurrency called \$JREAM, which is traded on the digital platform Rally. Both McKenzie Milton and D'Eriq King have released digital trading cards in the form of non-fungible tokens, or NFTs, through Dreamfield Sports on the OpenSea platform. One of the hottest trends in sports collectibles, NFTs have raised numerous unanswered legal questions about copyright protection for the underlying artwork and how the NFT owner can use their digital asset.

Finally, what happens when a student-athlete can't meet their contractual obligations? D'Eriq King injured his shoulder in September during a game, which could end the senior's college career, according to media reports. The talented quarterback with multiple NIL deals could be drafted by the National Football League or he may find himself becoming a full-time entrepreneur. If nothing else, the NCAA's NIL policy gives student-athletes at all levels more options for their futures.