



Your Role in K-12 Athletics Planning: Understanding NIL and Beyond

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Disclaimer

This presentation is not legal advice.

It is provided solely for informational and educational purposes and does not fully address the complexity of NIL issues or steps institutions must take under NCAA/CSC rules or applicable laws.

Agenda

Where Are We? How Did We Get Here?

- Higher Ed Athletics after *House*
- State K-12 NIL Laws
- Other State K-12 Athletics Laws

What Should Schools Do Now?

- Common NIL issues
- Business office, risk management, legal counsel, and athletics relationship

Future NIL Issues

Q&A

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Where Are We? How Did We Get Here?

What is NIL?

- NIL is an activity that involves the use of an **individual's name, image, and likeness (NIL)** for commercial or promotional purposes. **“Athletic Reputation”** is included in the definition in some state laws.
- Athletes can use their NIL to promote products and services through activities like autograph signings, social media posts, and product endorsements.
- Since July 1, 2021, college student-athletes have been able to engage in the same types of NIL opportunities available to current students under the NIL bylaws without impacting their NCAA eligibility.
- Shortly thereafter, high school student-athletes were able to engage in NIL opportunities as well.

House Settlement

- **Settled *Hubbard, House, and Carter (aka House Case)***
 - ***Hubbard v. NCAA***: “Alston Damages” case. Athletes competing from 2019 to 2022 seek damages for education-related payments they would have received if NCAA amateurism rules weren’t overly restrictive.
 - ***House v. NCAA***: Attacks remaining NIL rules and seeks damages on behalf of football and basketball players since 2016 and athletes in any sport at a Power 5 school related to money they could have earned using their NIL rights.
 - ***Carter v. NCAA***: From the same attorneys behind *Hubbard* and *House*, full-frontal assault on amateurism, the traditional model, and the power of the NCAA to adopt or enforce rules that limit competition for student-athletes in any way.
- The settlement agreement obligates the NCAA and member schools to pay athletes about \$2.8 billion over the next 10 years (on average about \$280 million a year) reflecting compensation they would have earned in endorsements and video games in NIL prior to the NCAA permitting NIL in 2021, plus a share of TV money.

House Settlement

Back Damage Calculations

- Football players: 75%
- Men's and women's basketball players: 20%
- Other athletes: 5%

10-Year Injunction

- 22% of sports revenue shared with athletes starting in 2025-26, with schools able to pay players for their NIL pursuant to an exclusive or non-exclusive license and/or endorsement agreement, up to an annual salary cap of about \$21 million initially
- Schools have discretion on how to allot payments

Shift from scholarship limits to roster limits.

Only third-party deals with a valid business purpose within the range of compensation are allowed going forward.

- Reporting required — share with a clearinghouse information about NIL deals that exceed \$600
- For booster NIL deals, student-athlete has burden to prove market value (Deloitte)

College Sports Commission (CSC)

Valid Business Purpose

Deals must demonstrate a legitimate commercial rationale, including:

- Evidence of using the student-athlete's NIL to promote a good or service being offered to the public for profit
- Compliance with industry-standard NIL practices
 - An entity with a business purpose of providing payments or benefits to student-athletes or institutions, rather than providing goods or services to the general public for profit, does not satisfy the valid business purpose requirement set forth in NCAA Rule 22.1.3.

Range of Compensation (RoC)

- RoC is anchored in valuation principles to determine if a student-athlete's third-party NIL compensation is commensurate with compensation paid to similarly situated individuals with comparable NIL value.
 - The deal's performance obligations, the student-athlete's athletic performance and social media reach, the local market and the market reach of his or her institution and program. The RoC also will be informed by external benchmarks.

College Sports Commission (CSC)

High School Rules

- **22.2.2.5.1 High School and Two-Year College Prospective Student-Athletes.**

- A prospective student-athlete initially enrolling at a Division I institution shall report all noninstitutional name, image, and likeness contracts or payment terms with compensation of \$600 or more that have been executed or agreed upon from the first day of classes of the prospective student-athlete's junior year in high school or the date of initial enrollment at a two-year college. If an individual enters into multiple agreements or receives multiple payments from the same or substantially the same third party, such activities must be reported if the aggregate compensation is \$600 or more during the established reporting period

22.2.2.5.3 Timing of Reporting.

- An incoming prospective student-athlete must report noninstitutional name, image and likeness contracts or payment terms not later than either 14 days after initial full-time enrollment at a Division I institution, or prior to the institution's first scheduled contest against outside competition in the individual's sport, whichever occurs first.

Post-House NIL Agreements

- **Institution Agreements with Student-Athletes (aka Rev Share Agreements)**
 - Grant Of Rights (Exclusive vs. Non-Exclusive)
 - Single Year vs Multi-Year Agreements
 - **Still No Pay To Play**
- **Financial Aid (aka Scholarship Agreements)**
- **Third Party NIL Agreements**
 - Associated Entity/Individual formerly known as Boosters (aka Collectives)
 - Non-Associated Entity/Individual
 - Disclosure of all NIL deals from third parties above \$600
- **International Student-Athletes**
- **High School Senior Offers**
 - An institution may provide a written offer regarding NIL or other additional benefits or payments on or after Aug. 1 of the prospective student-athlete's senior year of high school. However, the agreement may not be signed until signing day.

NIL Market

- Structuring and building of personal branding
- Value of Athletic Reputation
- Institution NIL market vs third-party NIL market
- Loans in consideration for future athletic income
- No warehousing NIL rights
- Guardians and Parents training



What Should Schools Do Now?

Common NIL Issues



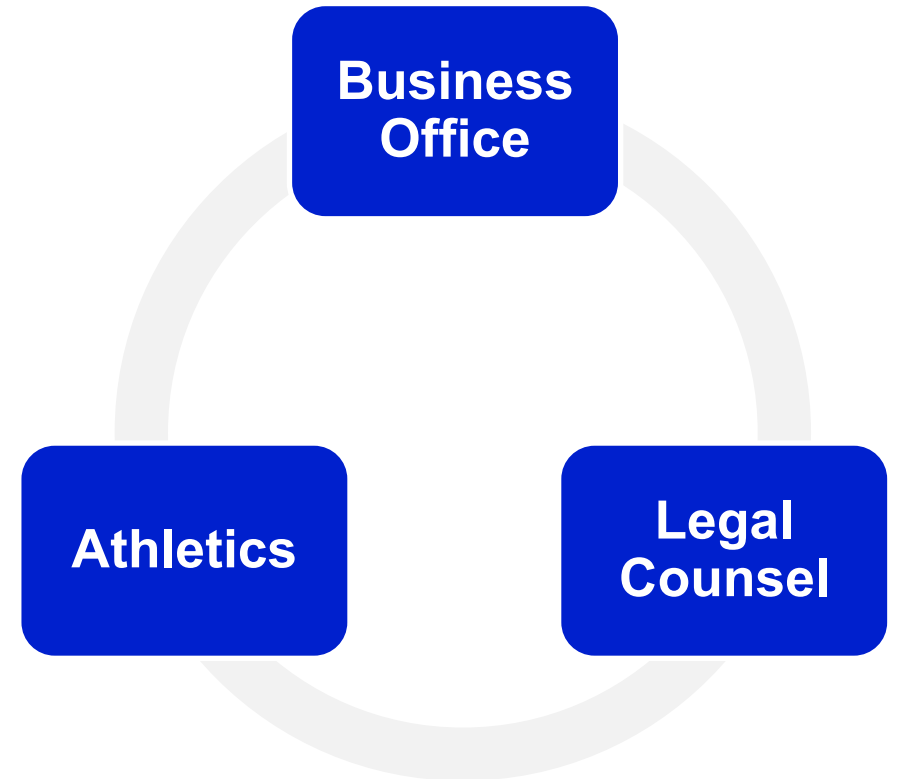
Use of school logo and IP



Title IX/equity issues: Title IX equity obligations attach to federal fund recipients; however, schools may have other sources and reasons — legal or otherwise — to consider equity

Business Office, Legal Counsel, and Athletics Relationship

- Identify key stakeholders — athletic directors, coaching staff, business office/risk management, administrators, students/families, community members/supporters
- Communicate and educate appropriately — educate stakeholders and student-facing staff on NIL, obligations, and risks
- Consider families' relationship and expectations with school — key differences between families' expectations and relationship with K-12 schools vs. higher ed; how to provide guidance to athletes and families without assuming risk
- Understand and monitor compliance obligations — which activities require disclosure; what are applicable limitations on school involvement



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Future NIL Issues

Future NIL Issues

- As high school students and families have the hope of and access to lucrative NIL deals, expect more challenges, more lawyers in your processes, and more claims related to athletic participation, discipline, and enrollment status.
 - NIL deals change the landscape for claims and for damages
 - Imposition of school discipline may lead to immediate challenges, including TROs
 - “The absence from student-athletes from teams on gamedays could negatively impact a team's ranking and selection to tournaments. Moreover, it may have lifealtering impacts on the student-athlete’s ability to pursue NIL deals and a professional career in their sport as well as impacts on their mental health.” *Shannon v. Bd. of Trs. of The Univ. of Ill.*, No. 24-cv-2010, 2024 WL 218103 (C.D. Ill. Jan. 19, 2024)
- Anticipate a shift in court deference to academic and conduct decisions by educational institutions.
- Review school policies and practices in anticipation of this change in relationship with students and treatment by court.

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Conclusion

Thank You / Q&A

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