

# **Name, Image, and Likeness (NILs): What Impact Will NILs Have on Students in the Classroom?**

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*As a result of several national court rulings, the NCAA revised its bylaws regarding student-athletes. Student-athletes are now being paid money by third-party interests for use of their name, image, and or likeness (NILs) in an endeavor to sell products, services, and student brands. Students advertise their NILs on social media and contract with local, state, and national vendors to endorse products. It is certainly beneficial for student-athletes, parents, families, and even local communities to profit from their work and athleticism. However, important concerns have been left out of the NILs discussion by the academy, the media, the NCAA, and academic journals. This article examines the impact NCAA rule changes have on college students in the classroom as well as the impact on faculty and administration. The probability exists of increased cheating, gender bias, and pressure on instructors who will be caught in the middle between money and grades.*

*Keywords: NILs, student-athletes, NCAA, gender bias, sports, amateurism, amateur sports, O'Bannon, Sherman Anti-trust Act, Alston, ethics*

## **INTRODUCTION**

Due to changes in rules by the NCAA this past summer, student-athletes can now be paid for the use of their name, image, and likeness (NILs) (Holden, 2022; Jessop, 2021). It has long been recognized that student-athletes pay a price for their athleticism, not being paid for their time, experience, or abilities. However, the NCAA has made a quantum leap by changing the rules and in effect ending amateurism such that student-athletes can receive funding from a multitude of sources for those sources to utilize athletes' names, images, and likenesses for profit. And student-athletes can, if they choose, create their brand to profit from as well. It is certainly beneficial for student-athletes, parents, families, and even local communities to profit from their work and athleticism. However, important concerns have been left out of the NILs discussion by the academy, the media, the NCAA, and academic journals. What impact will these changes have on student-athletes in the classroom? Amateurism, as it has been understood until now, was a wall that kept student athletes separated from compromising impacts or questionable influences that might encourage performance for pay, cause loss of eligibility, or impact academic development. While this paper is necessarily speculative, I would like to explore the possible drawbacks to these students' academic success. Pay for NILs may result in instructors being caught between forces wanting to keep student-athletes eligible to play and the grades they deserve.

## AMATEURISM AND THE NCAA

Amateurism primarily has meant no pay-for-play. Student-athletes come to college to play the sport they love and continue to develop their athletic abilities, all the while gaining academic knowledge, skills, and dispositions toward a degree in a field of interest. The question that should be on the minds of faculty, administrators, and academic departments is, “How will NILS potentially impact the classroom and learning?” Court cases have led to the evolution of payment for NILs, driving the NCAA to change its constitution almost overnight (Berkowitz, 2020; Doty, 2021; Elfman, 2021). If the defendants in these cases had not been student-athletes, they would have long ago been considered victimized. Student-athletes, until last year, had practically no input into when or how their names, likenesses, or images would be used in ways that others would profit from (Jessop, 2021; Opila, 2021). In the *O’Bannon v. NCAA* case, 2013, a man who graduated from college years earlier was at home playing a video game when he saw his image and likeness displayed in the game (Doty, 2021; Elfman, 2021; Palmieri, 2021; Rayburn, 2022). He could not understand how a video game company could display his image, likeness, and jersey number without his permission. The court cited the Sherman Anti-Trust Act in their deliberations but supported the NCAA’s ruling that *O’Bannon* was a student-athlete at the time of the recording of his image. He was not eligible to profit from its use, but the game company was (Holden, 2022; Doty, 2021; Rayburn, 2022).

However, not long after *O’Bannon*, in *Alston v. NCAA*, (2014 and 2019), the US Supreme court found in favor of Shawne Alston stating that placing limits on how student-athletes can be remunerated while in college was in effect unfair competition and so falls within the parameters of the Sherman Anti-Trust Act (Rayburn, 2022; Palmieri, 2021; Nachmany, 2021; Cooley, 2021). As a result, nearly all states have passed laws to provide rules for students enabling them, their families, and their agents, to receive funds for the use of the NILs (Andrews, 2021; Sommer, 2021; Fasciale, 2022). In addition, there is congressional legislation being considered, submitted by US House and Senate memacross-the-boardacross the board regulations that will affect all student-athletes and their sports agents. California was the first state to approve state legislation in 2019, adjusting its laws to incorporate changes the NCAA has promulgated since (Fasciale, 2022; Scerbo, 2022; Jessop, 2021).

## STUDENT-ATHLETES AND NILS

What can students do or not do in the world of NILs? Students can, according to NCAA rules, engage in NILs activities and receive money while guided by only a few requirements. For one, if a state does not have NILs laws in place, students can engage in those activities without the support of state law. Student-athletes may hire professional services to help them find, contract with, and look for third parties who might want to pay them for their use of NILS. Importantly, students must remain academically eligible to continue to play their sport. All things then, it seems, turn upon how well students do in the classroom.

Students, businesses, companies, corporations, and investment firms are creative about how student-athletes will benefit from NILs (Moody, 2012; Mondaq Business Briefing, 2022; Kunkel, 2021). Social media is primary. High-performing athletes have huge numbers of followers on Twitter, Instagram, Facebook, TikTok, Snapchat, and other media outlets. A local or national company, or an individual, can pay a student-athlete to post an icon, banner, or logo on their postings, or platforms. Moreover, student-athletes may build their brands for purposes of selling clothing, food, exercise routines, dance lessons, and promoting activities or purchases. Student-athletes are promoting camp sessions, autograph signings, local workout centers, food establishments, national gear, software, and national and international products. The possibilities seem endless. Contracting for the use of NILS carries with it expectations, requests, and requirements that are sure to pressure student-athletes to keep playing at the highest level, regardless of the physical, mental, or academic costs.

## **WHAT CAN STUDENT-ATHLETES LEGALLY DO?**

Student-athletes cannot accept cash from their home institutions, institutional-related athletic boosters, or anyone involved in recruitment (Bhabha, 2021; McGuire, 2022; Whitlock, 2021). The terminology of “Pay for Play”, until now, described the taboo against student-athletes being paid to play at a specific institution or a defined level of ability. However, what is unclear is how to separate student-athletes’ NILs income from how well they play or if they play at all. If a student-athlete does not play well and loses his or her place in the line-up, or worse, is removed from the team, how will that action reconcile with payments received? Won’t their place on the roster mean more than studying for a test or finishing a paper? Student-athletes must be enrolled full-time at their home institution and must maintain academic eligibility. At this time, we don’t know how a student will react when his or her grade point average comes close to or falls below the required institutional or program average. What provisions exist for student-athletes who find themselves academically ineligible or who are close to becoming ineligible to play their sport, yet are receiving money for NILs?

## **THE MISSING ELEMENT: ACADEMICS**

The relationship between pay for NILs, athletic performance, and academics are, to say the least, cloudy. Miller suggests, “NCAA member schools should focus their efforts on re-centering education as college sports’ main priority and providing education that includes NIL courses so that students can maximize their profits during college (Miller, 2002).” The connection between, or limitations for, receiving money for use of NILs and playing well, remaining on a team, and keeping academics first, is far from clear. Institutions must implement guidelines for NILs recipients, create councils to advise student-athletes, and ensure athlete access to legal counsel. Institutions must ensure that NILs pay does not interfere with academics; making sure that learning and classroom work is separate from money made by students. Will coaches be pressured by purchasers of NILS when a player is benched, not given enough minutes of playtime, or goes to the portal for transfer? Most athletes that are receiving NILs funds are either playing football or basketball and mainly on men’s teams. Is there an issue of gender equity or non-adherence to Title IX requirements that needs to be debated (Opila, 2021; Elfman, 2021; Flint, 2022)?

High-performing student-athletes already receive tuition, books, food, and other compensations, though this affects only a small percentage of students. Most play because they did so in high school, love their sport, and want to keep on playing. The vast majority are not looking to be recruited by professional sporting teams. However, if the pay is not shared with students who are sitting on the bench or those who are low on the roster, what impact will that have on team comradery, playing time, and team culture? Will paying for NILs have any impact on financial aid, on the annual analysis of effective family contribution (EFC) or total tuition paid by a student and his or her family? The need to maintain academic eligibility potentially raises a situation where outside entities have a financial interest in the student’s grades, and these entities might try to exert pressure on instructors or institutions to give unearned marks or maintain eligibility.

## **NILS ISSUES, THE MEDIA, AND NEWS**

Athletes have gained the mobility to enter the portal and move to another institution. And they can now make money at their sport. The image of the kid who comes from the poorer area of town bringing home money to support his family while playing college sports is inspiring. He or she can easily move to a college where more NILs funds are being paid (Opila, 2021; Caufield, 2022). What impact do his or her obligations have on academics? If the purpose of the college experience is to learn, gain knowledge, and enhance skills for the future, what happens when the classroom takes a back seat to the athletic arena?

High-performing student-athletes bring a lot of money to the media, to institutions, and to highly paid coaches. However, the pay cannot come to students directly from their home institution, at least not yet. NILs funding is a way around the institutional pay barrier. For students to be paid directly by their institution brings to bear employment issues such as receiving employment benefits, workers’ compensation,

unemployment insurance, competitive pay raises, union membership, and the like. Money for NILs cannot at this time come directly from the home institution or anyone representing the institution for purposes of recruiting or keeping athletes at the institution. It is more than a little unclear as to how to know where the line is drawn, separating the institution from those who are paying the athletes. For example, can board members pay for NILs? Can a restaurant owned by an institutional administrator pay a student-athlete for her or her NILs? Can an apartment complex or used car lot provide a gift to a student-athlete if owned by someone employed by the institution? The vast majority of student-athletes will not go on to play professionally. Their window of time to capitalize on their athleticism is during the four or five years enrolled in college. Students who receive NILs pay and do not attend academics and do not move on to professional sports will miss out on obtaining skills, knowledge, values, and dispositions necessary for the job market.

However, the future livelihood of most student-athletes will depend on their learning experience as they move from the institution to the job market. That learning experience must take precedence and should be the focus of their time in college. Easterbrook indicates that "... in the long run a college diploma is substantially more valuable than any pay [as a student] might receive..." Olympians, students at mid-major institutions, students at NCAA division II and III schools, and students in low-interest sports, will not have the advantages that the high-performing athletes have. And so, how will paying some student-athletes, but not all student-athletes, affect the sports culture, the total college experience, and academic achievement, overall?

## **THE MAIN EVENT**

The main argument of this paper is that paying for NILs may impact academics and student learning negatively, yet the issue is not being discussed or analyzed. Student-athletes will potentially be under even more pressure to cheat, plagiarize, buy papers from the internet, or recruit other students to complete assignments. Will student athletes be exploited for their athleticism and find themselves at the end of their college days without the tools they need to compete in the labor market? As student-athletes are paid or receive gifts, will that demotivate them from academics, diminish their drive to do well academically, or limit them from pursuing professional or graduate school? Though this point is not directly related to academics, it is important to realize that there will develop a social wedge on teams when some students are paid while others are not. Athletic teams have a sub-culture that can lean a team toward winning or losing. And of course, let's not forget that non-athletes live with and among student-athletes who are being paid or given cars or free passes to local, state, or national attractions. Jealousies can arise, hidden discontent can develop, and teams and fans can quickly become demoralized.

The financial interest supporters have in student-athletes may easily flow over to academics. If grades are falling or academic eligibility comes close to being under the magnifying glass, local restaurateurs, national companies, or investor groups, might contact the institution, the school, the dean, and or the instructor to exert pressure to ensure eligibility. Pressure like this does not have to be overt. It can be as subtle as a pointed conversation or a note asking how the student-athlete is doing in class, easily unsettling the sensitive balance of learning, instruction, and academic development, to say nothing of the sensitive balance between town and gown. These matters suggest a need for retooling the Family Educational Rights and Privacy Act (FERPA) to ensure confidential academic information is not dispersed to outside influences.

A national company representative might contact the institution's president, the school dean, or the course instructor to ask questions, pose suggestions, or simply provide a reminder of how important the student-athlete is to the institution, the city, or the nation. Giant companies such as Nike, Under Armour, and ESPN are all deep in the sports market. With a financial stake in the student's academic eligibility, how will they respond when the instructor's hands back an "F" on a course paper?

Regarding the ethics of student-athlete recruitment, recruiting students will take on a whole new dimension. How much money are other student-athletes receiving? What NILs opportunities are other institutions providing? What is the connection the institution has with other high-performing athletes who

are enrolling at an institution with considerable NILs income? The quality of the academic experience will take a backseat to the level of pay obtainable. In addition, high school athletes are being groomed to consider institutions where the NILs factor is deep and rich. The high school student who has been considering medicine or law as a discipline might shift his or her focus toward athleticism rather than scholasticism. Will some high school students leave early to enter an institution that promises summer courses that will lead to an early high school diploma, and then sign up to play at the college level to receive NILs rewards? There is a concern for students' reputations too, after college. If contracts are broken, money is misused, and unethical behavior is incurred, these actions will follow student-athletes trying to join a professional team or enroll in a professional school after college.

In a 2013 survey, a majority of college students thought that scholarships were enough payment for athletic involvement (Grambeau, 2021). In 2020, 73% of college students supported paying student-athletes. However, forty-five percent believed it will have an impact on student culture and 55% stated that there will be divisions among team members because of NILs pay (Grambeau, 2021).

## CONCLUSION

There are important issues and concerns in the realm of pay for NILs that will affect academics, yet they are not being discussed. The most important is determining what impact money will have on the student's academic experience. What are the options for ensuring a continued focus on academics? First, it is important for faculty to create transparent and complete course syllabi, clearly indicating the dimensions of how coursework and testing will be measured and graded. All interaction with student-athletes and all students must be in writing and kept on file whether in-office meetings or online. Colleges and universities should set up NILs committees or councils that are ready to hear, analyze, and adjudicate issues, cases, and matters involving student-athletes, team issues, and questionable unethical incidents, practices, and interactions. A student athletics NILs advisory council or committee would be separate and apart from the institutional administration and have the support of institution counsel. All contacts made to student-athletes by those with a financial interest should go through the advisory council or an institutional administrative office that can act as overseer to limit unintended or intended unethical contacts, pressures, questionable suggestions, or behaviors by outside entities wanting to influence student-athletes, inappropriately. Training should be provided to faculty, staff, and students on how the NILs process works, how students can negotiate NILs alongside their academic experience, and how to be part of the NILs process at least risk. The federal government should set up an oversight agency within the DOL or DOE whose mission would be to identify unethical actions, encourage proper behavior, make meaningful connections, and monitor influences between third-party payors such as business collectives, firms, businesses, community enterprises, and students and their degree-granting institutions. Colleges and universities should require student-athletes (and in some cases family members) to attend seminars and presentations to learn how to negotiate the new terrain of NILs pay, how contracts will impact them, and what the negative consequences of NILs pay might be. Protecting student athletes and fortifying academics should be at the heart of the NCAA changes in rules and not media pressure, the influence of money by third parties, or pressures to perform.

It is possible that NILs pay can become a positive life experience for students, families, institutions, and communities if student-athletes become role models in the classroom or promote hometown events and attractions. However, student-athletes should not be distracted from learning. Institutions must develop ways to ensure learning continues to be at the heart of the college experience for student-athletes.

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