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Athletics on an Axis: An Overview of Recent and Anticipated Regulatory Changes in the World of College Athletics

Part of the Issues in Higher Education Webinar Series

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Agenda

- Legal Challenges to NCAA Rules
- Name, Image and Likeness
- College Athletes as Employees
- Title IX Lens
- Ongoing Legal Matters

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Antitrust Litigation

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Ohio et al v. NCAA (Transfer Rule)

Plaintiffs challenge (1) the restriction on multiple undergrad transfers as an unjustifiable restraint on student-athletes, and (2) the Rule of Restitution.

- Court says there are less restrictive means to achieve the goals and procompetitive benefits of the transfer rules.
  - There are no NCAA bylaws that link transfer rules with amateurism
  - Academic eligibility rules effectively achieve academic goals
- Dept. of Justice joined the suit on Jan. 19, 2024

Trial scheduled for 2025

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Tennessee & Virginia v. NCAA

Preliminary Injunction: NCAA and member institutions shall not enforce the NCAA Interim NIL Policy, NCAA Bylaws or "any other authority" that prohibits student-athletes from *negotiating NIL compensation with any third-party entity*, until a final decision is made.

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Tennessee & Virginia v. NCAA

- "NIL-recruiting ban" limits student-athletes' negotiating leverage and knowledge of value.
- Maintaining competitive balance and protecting student-athletes from exploitation are "legitimate concerns."
- "'Social justifications' for restraint of trade do not make it any less unlawful."

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House et al v. NCAA ("NIL Backpay" Case)

Same trial court as O'Bannon and Alston, plaintiffs alleging the NCAA and named conferences violated antitrust law by prohibiting athletes from earning NIL compensation and that football and basketball players should have the ability to share in telecast group licensing revenue.

- Seeking backpay for lost NIL broadcast revenue, lost NIL video game revenue, and lost NIL revenue since June 15, 2016, but for NCAA's prior NIL rules.
- Sept. 2023: judge certified injunctive relief class

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Name, Image and Likeness

Florida is under NCAA investigation a year after a failed NIL deal with QB signee Jaden Rashada

Five-star recruit in Class of 2023 signs agreement with collective that could pay him more than $8 million

Tennessee Sues NCAA Challenging Its NIL-Recruiting Ban

AG Skrmetti argues NCAA's NIL-recruiting ban violates federal antitrust law, thwarts the free market, harms student-athletes.

College Athletics

New Lawsuit Could Decide Whether NIL Is Subject To Title IX

BY AMANDA CHRISTOVICH
UPDATED DECEMBER 04, 2023 | 09:46 AM

Adam Silver: NBA to reassess G League Ignite in wake of NIL

4 New Federal NIL Bills Have Been Introduced In Congress

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Florida State University Negotiated Resolution (January 2024)

- Impermissible recruiting activities
  - Assistant football coach transported PSA and parents to meeting with booster on behalf of the collective but did not attend meeting
  - Booster communicated offer by collective of $15K per month to enroll during meeting
- Unethical conduct by assistant coach
- Level II-Standard for FSU; Level II-Aggravated for assistant coach

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COLLEGE FOOTBALL

Florida State football hit with NCAA sanctions over NIL violations

By Matt Bonesteel

Updated January 12, 2024 at 1:50 p.m. EST | Published January 12, 2024 at 9:57 a.m. EST

A Florida State assistant football coach committed several major violations, according to the NCAA. (Rich Storry/Getty Images)

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New NCAA NIL Rules

Effective Aug. 1, 2024

- No NIL compensation for athletics participation or achievement.
- *No recruiting inducements*
- Required disclosures for NIL activities of $600 or more:
  - *After 30 days, student-athlete is ineligible until activity is disclosed*
- NCAA database of disclosed NIL information.

Proposed for April 2024 Vote:

- "Officially affiliated entities" (e.g., Collectives) must follow "institutional standards" (i.e., NCAA rules).
- Permit institutional involvement but prohibit compensation to student-athletes.
- No NIL agreements until individual triggers "student-athlete" status.

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Institutional Involvement in NIL

Feb. 1, 2024: The Legislative Committee directed NCAA staff to update the existing guidance …Specifically, the guidance will be updated to specify that an institution (or staff member) may not:

- schedule or lead a meeting with student-athletes to discuss terms of a proposed NIL agreement,
- provide proposed agreements to student-athletes or return signed agreements to an NIL entity.

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Willingness to Challenge NCAA Rules

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Property Interest & Irreparable Harm Claims

- Terrence Shannon (Univ. of Illinois MBB)
  - Challenged Illinois' enforcement of a competition suspension resulting from sexual misconduct charges.
  - TRO Granted (Jan. 19, 2024)
- Jeremiah Williams (Rutgers MBB)
  - Challenged NCAA's sports wagering withholding and multi-undergraduate transfer rule.
  - TRO Granted (Feb. 2, 2024)

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Student-Athletes as Employees

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Johnson v. NCAA (Aug. 2021)

Plaintiffs claim student-athletes should be classified as employees and thus are entitled to minimum wage under the Fair Labor Standards Act (FLSA).

- District Court ruled that student-athletes are employees under "the Glatt Test" focusing on control of the employer and relationship between athletics and students' educational program.

Awaiting Appellate Court decision after Feb 2023 oral arguments.

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Current NLRB Cases

Dartmouth – Regional Director found that men's basketball student-athletes are employees:

- (1) Players perform work which benefits Dartmouth
- (2) Dartmouth has the right to control the work performed by the men's varsity basketball team, and
- (3) Players perform that work in exchange for compensation.

University of Southern California General Counsel alleges USC football, men's and women's basketball student-athletes are joint employees of USC, the Pac-12, and NCAA

- Focuses on Student-Athlete Handbook "rules"

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Title IX – Gender Equity in Athletics

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Title IX & Gender Equity in Athletics

"No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis."

34 C.F.R. § 106.41

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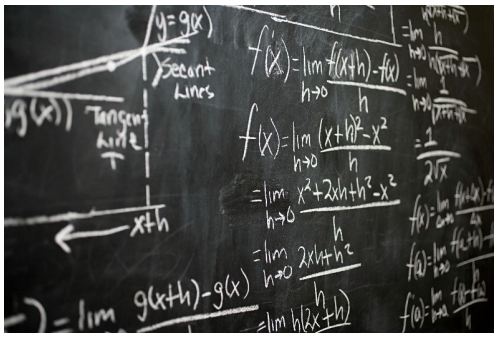
Title IX Compliance – 3-Part Test

I. Equitable Participation;
- Substantially proportionality, or
- History program expansion, or
- "Full and effective" accommodation of interests.

II. Equitable Financial Support; AND

III. Equitable Treatment (i.e., "laundry list")



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Gender Equity & the Current Athletics Environment

Sport Sponsorship

- Elimination of teams & roster management
- *Biediger v. Quinnipiac University*, 691 F.3d 85 (2nd Cir. 2012): The court held Title IX permits the University to set roster caps for the overrepresented. The elimination of programs for the underrepresented sex means an institution cannot meeting prong 2 or 3.

Financial aid, Fundraising, and Budget Dollars

- The total amount of **assistance awarded** to men and women must be "substantially proportionate" to participation rates in athletic programs
- **Dollars spent** on male and female athletes must be within 1% of participation percentage).

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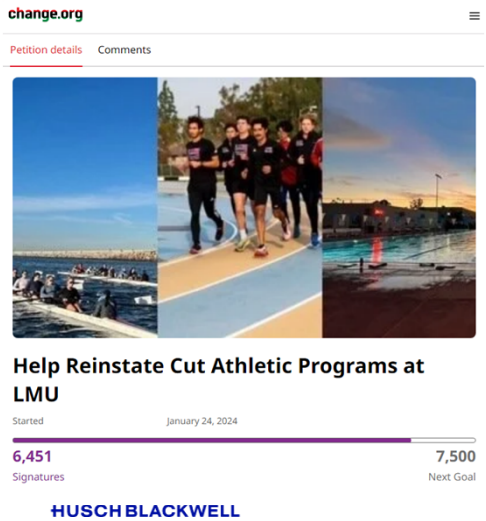
Loyola Marymount



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Gender Equity & the Current Athletics Environment

Marketing & Promotion:

- Availability and quality of sports information personnel
- Access to other publicity resources for men and women's programming
- Quality and quantity of publications and other promotional devices

Name, Image, Likeness (NIL):

- Education and Access
- Collectives

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Other Key Issues

- Conference Realignment
- NCAA "Project D1"
  - Educational trust fund
  - Potential new Division I Subdivision

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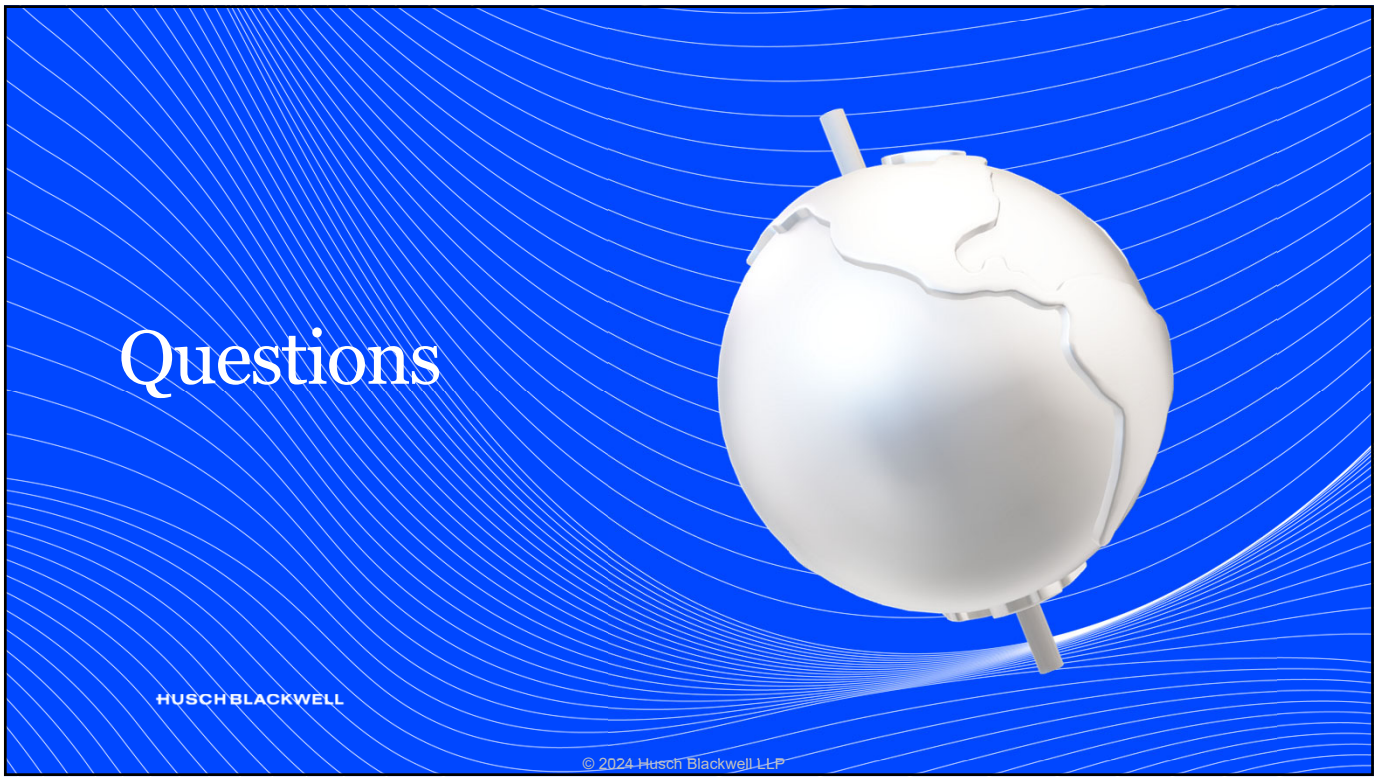

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