

The NCAA's First Act: Enforcement of NIL Rules

WRITTEN BY

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On January 11, the NCAA announced its most significant (and, at least arguably, only) name, image, and likeness (NIL) enforcement action to date against a university and its football program for impermissible recruiting activities involving NIL with a prospective student-athlete.

According to a [negotiated resolution](#) released by the Division I Committee on Infractions, a university assistant football coach violated NCAA rules by facilitating an impermissible recruiting contact between a prospective student-athlete in the NCAA-sanctioned transfer portal and a university booster, the chief executive officer of an NIL collective. During that contact, the university booster encouraged the prospective student-athlete to enroll at the university, offering the prospective student-athlete an NIL deal worth approximately \$15,000 per month for a period of at least one year as a recruiting inducement. The prospective student-athlete ultimately withdrew his name from the transfer portal and remained at his original school. However, both the NCAA enforcement staff and the university agreed that recruiting and NIL rules violations occurred, assessing the impermissible recruiting activities as a Level II violation.

The case was processed through the negotiated resolution process in lieu of a formal hearing. This means that the school, the coach in question, and the NCAA enforcement staff agreed on the violations and the penalties. As a result, the following penalties were assessed against the university:

- Two years of probation;
- A two-year show cause order for the assistant coach, including a three-game suspension, two-week restriction on recruiting communication, and required attendance at an NCAA Regional Rules Seminar;
- Restriction from off-campus recruiting during fall 2023 for the assistant coach;
- Three-year disassociation from the booster;
- One-year disassociation from the collective;
- A fine of \$5,000 plus 1% of the football budget;
- Five percent reduction in football scholarships of the two-year probationary period;
- Reduction in official (paid) visits in the football program in the 2023-2024 academic year;

- Reduction in football recruiting communications for six weeks during the 2023-2024 and 2024-2025 academic years; and
- Reduction in the number of in-person recruiting days during the 2023-2024 academic year.

This matter represents the most significant NIL enforcement action the NCAA has taken since enacting its interim NIL policy in July 2021, permitting student-athletes to receive NIL compensation for the first time. And unlike the NCAA's sanctions against the University of Miami (Miami) and its women's basketball program, here the NCAA is punishing the university for violating its NIL rules.

Key Takeaways From This NIL Enforcement Action

1. The NCAA is coming for boosters and collectives. Since the inception of NIL, the NCAA has said it would hold schools, not players, accountable for NIL violations. True to its word, the NCAA's punishment here is directed at the university. More recently, and particularly under new President Charlie Baker, the NCAA has indicated a desire to likewise hold boosters and collectives accountable for NIL violations. In this case, the NCAA did just that, to the greatest extent it could. Since the NCAA is a membership organization, its authority is limited to those member institutions. Boosters and collectives are generally outside the NCAA's reach. However, the NCAA nonetheless targeted those entities by requiring disassociation from the university for three years. This likely represents the most significant action the NCAA can take against boosters and collectives, and the NCAA did not hold back imposing punishment in its first NIL enforcement action.
2. Timing is key. The NCAA has lamented the difficulty in proving that a particular NIL opportunity constitutes an "inducement" to a student-athlete such that it could be found to violate the interim policy. However, in January 2023, the NCAA changed its enforcement standard to permit violations to be "presumed" based on circumstantial evidence alone. We have speculated that when the NCAA took NIL enforcement action it would follow the lead of other investigatory bodies that seek to prove an inducement relationship by pointing to the timing of a particular benefit closely coinciding with a commitment to a particular school. That appears to have been a key component of the NCAA's case here, as the NIL offer was made *before* the student-athlete committed to the school. Interestingly, earlier this week the NCAA Division I Council announced a proposal that would outright ban these types of NIL communications (e.g., before the student-athlete signs a letter of intent, enrolls at the school, participates in practice, etc.). Clearly, the NCAA is scrutinizing the timing of NIL deals, and it appears to be predisposed to believing offers that come *before* a student-athlete commits to a school are more likely to constitute an improper inducement. Schools should be wary of this and would be wise to dedicate additional compliance attention to pre-commitment contacts by boosters and collectives.
3. There appears to be real benefit to admitting wrongdoing. The NCAA and the university resolved this matter through the NCAA's negotiated resolution process. This required the university to cooperate with the investigation and admit wrongdoing, and also forgo the opportunity to try to prove there was no violation at a hearing. By doing so, the university was able to avoid some of the more severe penalties the NCAA can levy against institutions (e.g., a bowl ban, a suspension for the head coach, or more significant scholarship forfeitures). Given the apparent evidence the NCAA was able to gather, and the fact that the NCAA's new (and less stringent) enforcement standard applies here, one or more of those severe penalties could certainly have

been in play. It is not unreasonable to believe that the university was able to avoid them by opting for the negotiated resolution route. Other institutions who inevitably face NIL investigations should likewise consider that route in consultation with legal counsel.

4. The more lenient enforcement standard will lead to more enforcement actions. Prior to relaxing the NIL enforcement standard to permit NIL findings based on circumstantial evidence alone, the NCAA vocally lamented the difficulty it was having in identifying and obtaining the necessary evidence to prosecute NIL cases. That was certainly one of the messages the NCAA delivered loud and clear when it investigated Miami and its women's basketball team for potential NIL violations, yet was only able to make a minor recruiting violation stick. Some have speculated that the case against Miami led the NCAA to relax the charging standard to make it easier to enforce NIL rules without subpoena power or authority over the entities (e.g., collectives) that had much of the necessary evidence. In a sense, the allegations against the university were not all that dissimilar to those against Miami. But the outcome was very different. That can be attributed to the more lenient charging standard. If the NCAA is to be believed, the biggest obstacle standing between the organization and more substantial NIL enforcement was its difficulty obtaining evidence. Given the NCAA's success in this case against the university, it may be that the tide has turned. If so, we should expect to see significantly more enforcement actions in the near future.

Whether this university enforcement action is the start of a new trend or just a blip on the NIL radar remains to be seen. But the NCAA has been staffing up its enforcement division for more than a year now, warning institutions that NIL enforcement actions are coming. If this is the NCAA's opening salvo in what will become sustained NIL enforcement activity, schools should take notice and consult legal counsel about preemptive steps they can take to guard against NIL-related sanctions. Reviewing and implementing a strong compliance program is the key initial step. With NIL enforcement on the rise, monitoring student-athletes, boosters, collectives, and coaches is now more important than ever.

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