

The NCAA's New Charging Standard for NIL Violations

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The National Collegiate Athletics Association (NCAA) released its interim policy regarding name, image, and likeness (NIL) for NCAA student-athletes in July 2021. Since then, the NCAA has released several clarifying guidance documents detailing the types of NIL activity it deems permissible and impermissible under that policy. Consistent across all these guidance documents, however, has been the key restriction that NIL opportunities afforded to student-athletes cannot be used as “pay-for-play” or as an “inducement” to attend a school or participate in a particular sport.

In October 2022, the NCAA issued one of its most consequential pieces of guidance, the main component of which was creating a new enforcement standard for NIL violations. That new enforcement standard effectively flipped the burden of proof in NIL cases, shifting it from the NCAA having to prove an NIL violation to the charged institution having to prove it did not commit a violation. This new charging standard represents a seismic shift in the NIL enforcement landscape.

In this article, we address the new charging standard, including enforcement activity to date, the likely use of circumstantial evidence by the NCAA to charge NIL cases going forward, and potential compliance challenges for institutions.

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