



What Florida Schools Need to Know as High School Student-Athletes Seek NIL Compensation

Insights

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When Florida's name, image and likeness (NIL) law went into effect this past summer, it created many opportunities for businesses that wanted to enlist college athletes as part of their marketing campaigns. A recently filed lawsuit has opened the door to a potentially new angle that Florida schools may need to soon manage: whether high school student-athletes are entitled to compensation for their NIL. What do you need to know about this new development and the volatile state of student-athlete compensation?

The Lawsuit

Two Florida students filed a class action complaint in January in state court on behalf of all student-athletes, alleging that a new NCAA policy protecting the rights of college athletes to exercise their right of publicity does not go far enough. The lawsuit alleges the organizations responsible for administering high school sports in Florida have unlawfully conspired to deny student-athletes the right to be compensated for the use of their name and likeness in violation of Florida antitrust law.

One of the two plaintiffs, a Florida high school baseball player, alleges he was offered an endorsement contract by a company that designed a blockchain-based system for sharing healthcare data. However, he was forced to turn down the deal because it would have rendered him ineligible under Florida High School Athletic Association (FHSAA) rules. The lawsuit, filed as a class action on behalf of all similarly situated high school athletes in Florida, seeks a declaration that the FHSAA rules such as this one are an invalid exercise of the state's police power, and thus "an unconstitutional violation of the freedom to contract" under the Florida constitution.

Clash Begins in New Venue

Notably, the FHSAA rules were developed in coordination with the National Federation of State High School Associations. The lawsuit alleges that the two entities have formed "a contract, combination, or conspiracy" to prohibit high school athletes from exercising their right of publicity in violation of Florida antitrust law. In the past few years, legislatures and courts have been analyzing the antitrust implications of policies that prevent student-athletes from monetizing their NIL. Most of the attention has been garnered at the collegiate level.

The lawsuit's primary focus is high school athletes. However, the other plaintiff in the lawsuit, a University of Miami football player, also alleges that he was offered a contract by the blockchain company. But since NCAA policies defer to state publicity laws — and Florida law protects the right of collegiate athletes to enter into marketing contracts only for the duration of their college career — the athlete was able to enter into a contract for only one year.

The class action lawsuit contends that the limitations on the NCAA's policy likewise violates the Florida right to contract provision and constitute an unlawful restraint of trade under Florida law.

What's Next? And What Should You Do?

The lawsuit is in the early stages and it could take months – or even years – to be sorted out. If the plaintiffs are ultimately successful, however, high schools in Florida will need to assist student-athletes with managing NIL contracts and can also expect compliance obligations similar to Florida's NIL law for collegiate athletes. Additionally, it is likely that student-athletes in other states who work with the National Federation of State High School Associations could rely upon the decision in Florida to argue their inability to monetize their NIL is in violation of their state's antitrust laws.

If your business has additional questions on this process, feel free to reach out to your Fisher Phillips attorney, the author of this Insight, or [any attorney in our Florida offices](#). We'll continue to monitor the status of this litigation and will provide updates as warranted, so make sure you are signed up for Fisher Phillips' Insight service to receive the latest news directly in your inbox.

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