

COLLEGE ATHLETICS ARE A-CHANGING

The transfer portal and NIL (name, image, and likeness) payments have recently significantly changed the landscape of college sports. The combination of the two has resulted in free agency for student athletes and hotly contested litigation in connection therewith.

The National Collegiate Athletic Association created the transfer portal in 2018. Prior to its creation, student athletes had to obtain permission from their existing schools to transfer to other schools and had to sit out a year from competition upon transferring. The creation of the transfer portal changed those rules, allowing student athletes to transfer at will and play immediately.

The NCAA created its NIL policy in 2021, which permits student athletes to profit from their name, image, and likeness while in college.

When colleges pay their student athletes, they typically have them sign agreements (frequently called "NIL License Agreements"). The NIL License Agreement used by the Big Ten Conference schools, for example, provides that the student athlete grants the school a "license to use the Student-Athlete's name, nickname, pseudonym, voice, signature, caricature, likeness, image, picture, portrait, quotes, statements, writings, identifiable biographical information, other identifiable features and any other indicia of personal identity." The agreement further provides that during its term, the "Student-Athlete will not . . . enroll at and/or compete in athletics for another college or university" or "use or authorize the use of the Student-Athlete's NIL in connection with any college or university other than" his or her existing school. The agreement further provides that during its term, the school "is not obligated to enter the Student-Athlete into the transfer portal" and, "even if the Student-Athlete transfers to another university or college, the Student-Athlete will not use or authorize the use of the Student-Athlete's NIL in connection with the transferee university or college."

Reports indicate that over 70% of men's college basketball players with remaining eligibility entered the transfer portal last year, with some schools paying them as much as \$4 million or more per year in NIL money.

But what happens when a student athlete who is a party to a multi-year NIL License Agreement decides to transfer to a different school during the term of the agreement? This scenario has recently played out and resulted in aggravated litigation between the current

school and the student athlete, and between the current school and the school to which the student athlete transferred.

In July 2024, quarterback Darian Mensah signed a multi-year NIL License Agreement with Duke University, reportedly worth \$4 million per year. The agreement provided that Mensah would not “enroll at or compete in athletics for another collegiate institution” during the term of the agreement, which ends on December 31, 2026. Following the 2025-26 college football season, Mensah announced he would be entering the transfer portal, and it was reported he intended to transfer to the University of Miami. Duke sued Mensah in January 2026, seeking to force him to honor his NIL License Agreement and to prohibit his transfer. On Duke’s motion, the court granted a temporary restraining order prohibiting Mensah from enrolling at or playing for another school through December 31, 2026. Thereafter, Duke and Mensah entered into a confidential settlement agreement pursuant to which, according to reports, Duke permitted Mensah to transfer to Miami, and Mensah paid Duke a significant sum to buy out of his agreement.

In January 2025, the University of Wisconsin sued the University of Miami for allegedly tampering with defensive back Xavier Lucas, who transferred from the University of Wisconsin to the University of Miami a few weeks after signing a multi-year Memorandum of Understanding with the University of Wisconsin. Wisconsin alleged that Miami tortiously interfered with its MOU with Lucas. Discovery is proceeding in the case.

On February 25, 2026, the University of Cincinnati sued its former quarterback, Brendan Sorsby, for breaching his NIL License Agreement with the university by transferring to Texas Tech University during the term of the agreement. Sorsby’s agreement with Cincinnati provided that, if he transferred to another school during its term, he would pay the university liquidated damages of \$1 million. As of this writing, Sorsby has not filed a response to the lawsuit; it is due on April 27, 2026.

These cases and others could set a precedent (legal or practical) for future conduct by schools and student athletes. It is unknown whether NIL License Agreements will be governed by antitrust laws, laws relating to restrictive covenants (covenants not to compete), contract principles, or some other legal principle. Depending on what law governs, the results could be very different. For example, if the agreements are governed by laws relating to restrictive covenants, some states prohibit them except in limited circumstances. In contrast, other states consider various factors in determining enforceability, such as whether the agreement is unduly harsh to the restricted party and whether it violates general principles of public policy.

It will be interesting to watch how these cases and others shake out and what impact they have on the NIL environment in college sports. The student athletes may have significant risk either way. If they lose, the courts may prohibit them from transferring and order them to

pay damages to their previous school, which could include reimbursement of some or all of the NIL money they received and the school's attorney fees. If the student athletes win, schools may be more cautious about how much or when they pay the student athletes given that, otherwise, there may be no guarantee that a school will ultimately receive the benefits of the deal.

College sports are rapidly changing, and litigation in this area is expected to increase, at least until the NCAA or the courts better define the rules.