



THE DRAKE GROUP EDUCATION FUND

Realizing The Promise
Of College Athletics

FOLLOW-UP NOTES

WEBINAR #8

“The Disintegration of the NCAA: The Price of Rejecting National Governance”

The Drake Group Education Fund Webinar Series – Critical Issues in College Athletics

Hosted by LRT Sports

Thanks for registering for our February 24, 2022 webinar. A regular feature of our webinar series is “Follow-Up Notes” which provides a link to the recorded webinar, answers to questions from the audience which panelists did not have the time to address or those emailed to us from telephone participants. These responses are prepared by Drake Group experts). Also included is information on our next webinar.

1. WEBINAR #8 RECORDING

In case you missed any part of *The Disintegration of the NCAA: The Price of Rejecting National Governance* webinar:

[ACCESS THE RECORDED FEBRUARY 24 WEBINAR HERE](#)

2. UNADDRESSED QUESTIONS FROM THE AUDIENCE

Q: We’ve already seen 5 states begin to allow NIL deals for their high school students. Do you foresee any federal legislation being created in the near future to regulate high school NIL deals, or maybe even halt them? Do you think that not having a large organization like the NCAA for high school students will make legislation easier or more difficult to be created?

A: Braly Keller at Opendorse is [tracking state NIL legislation](#). Twenty-five states prohibit high school students from monetizing their NILs; eight states permit and the remainder either need clarity or rules are currently being considered. Unlike college sports with national organizations

like the NCAA, NJCAA, CCCA, NAIA, etc., the National Federation of State High School Athletic Associations does not “govern” high school sports. Thus, high school sports are controlled at the state level. In September, 2021, a group of Atlantic Coast Conference athletes sent a [request to several U.S. senators](#) asking for consistent federal NIL legislation. It is still too early to tell whether states will follow the trend giving high school athletes the same NIL rights as college athletes NIL rights. And it is too early to tell whether state high school organizations will enforce existing eligibility rules that may address such outside employment or follow the example of the NCAA “freeze” on enforcing recruiting rules related to the use of NILs to induce athletes to attend or remain at an institution. Fragmentation of employment rights created by differing state laws coupled with athletics governance organizations failing to grapple with the intersection of NIL and recruiting have created the current chaos in college sport where recruiting and commerce is nationwide. This same effect is unlikely at the high school level where only private high schools recruit nationally, public high schools are prohibited from recruiting, and athletic programs primarily compete within state boundaries.

Q: What factors stemming from the NCAA’s disintegration will place an increased financial burden on schools and their athletic departments?

A: The June 2021 SCOTUS decision resulted in the NCAA giving up on enforcement of its rules that prohibit boosters and other representatives of athletics interests from offering inducements or extra benefits to prospective athletes to attend or to current athletes to remain at a member institution if such compensation is in the form of NIL payments (athlete paid for a service rendered). Boosters, corporate sponsors, and collectives of donors are now funneling funds that previously went to athletic departments directly into the hands of college athletes. It’s still too early to assess the impact of NILs on athletics department revenues other than to opine on the likelihood that this development will diminish alumni and friend donations and sponsorship revenues to the athletic department. Complicating the matter further is the fact that pre-NIL comparisons will be difficult given shutdowns that occurred during the 2020-21 pandemic.

Further, we do not yet know whether these potential NIL losses might be offset by athletic departments entering into group licensing deals with their athletes (i.e., video games, sale of school jerseys with athlete names, etc.), the results of which will not be immediately apparent.

In January of 2022, the NCAA restructured to transfer rule-making and enforcement from the national governing organization to its competitive divisions and subdivisions. Until divisional “transformation” committees pick up the rule-making and enforcement responsibilities, it appears that no entity is working to control the current NIL chaos.

It is also too early to assess the cost of new athletic department programs developed in response to athlete NIL rights such as NIL education and NIL tracking and compliance personnel costs. Further, there is no central repository of NIL data that would allow a careful examination of what is really happening on the ground. Each school collects NIL agreements from its own athletes without the involvement of a national governance organization or third party agencies in a position to aggregate all deals. In addition to the NCAA transferring rule making and enforcement to competitive divisions and subdivisions, competitive divisions will incur yet to be determined litigation risks and costs.

Q: Who on campus is likely to look out for (a) too much time & energy demanded by sports and (b) channeling athletes into majors that likely will keep at-risk athletes eligible? Faculty senates? Accreditation organizations?

A: When the NCAA discarded the Division I peer review certification program in 2011, it discarded the only NCAA mandated mechanism to require a comprehensive once-every-ten-years assessment of academic outcomes disaggregated by sex and race at the individual campus level that could have detected course and major clustering, examined CARA (countable athletically related activities) reports, and other deep dive data. The certification work was done by campus-wide committees of non-athletics faculty and staff, with the final report reviewed by athletics administrative and student-services experts from other institutions. Athletics and higher education leaders are not voicing the need to reestablish this program. This lack of willingness to make the operation and outcomes of athletics programs transparent to faculty and the public is disheartening.

We are not aware of any proposal to upgrade accreditation organization assessment of athletics programs or any major initiative to ignite faculty senate involvement in such oversight. COIA ([Coalition on Intercollegiate Athletics](#)) is an organization of Division I faculty senate representatives that is positioned to lead such an effort but to date has focused on educating faculty as opposed to organizing faculty senates to fulfill an athletics educational integrity oversight function. The good folks working in athletic department student service areas cannot control the coaches who are making excessive time demands and exerting pressure to keep athletes academic eligible to compete at any cost. Rather, they are doing their best to help athletes cope with these pressures and obtain meaningful degrees. The low graduation rates of athletes of color in Division I basketball and football demonstrate that there is much work to be done.

Since the NCAA has given up its national governance and enforcement jurisdiction by transferring these roles to competitive divisions, few practitioners are betting that Division I leadership will place a high priority on designing a check and balance system to protect athletes from excessive time demands, abusive coaching practices, or academic fraud.

Q: While small resource-limited institutions are identifying the areas they are indeed good at and being strategic with regard to retention of athletes and students generally, the larger, better resourced schools appear to be over confident and not worried about retaining their athletes. Are looks more important than the actual facts?

A: There is little disagreement that the Division I arms race has, up to this point, been focused on “good looks” or the sparkle of their brands. Lavish facilities have been built to attract impressionable 17-year-olds, multi-million-dollar coaches are portrayed as key to improving the college athlete’s less than 2% chance of playing a day in the NFL or NBA, and promises have been made touting extensive television exposure that will elevate athletes’ personal marketability. 2021 NIL opportunities and the reality of a new wide-open transfer portal created a new recruiting environment. Instantly, the strategic recruiting focus of flagship state institutions and highly regarded private institutions with wealthy alumni and athletics aspirations, turned from good looks to dangling NIL inducements.

The recruiting promises of a better NFL or NBA chance were never realistic. For the majority of the Division I basketball and football players (who are athletes of color), the promise of a meaningful education was similarly unrealistic because a large percentage were specially admitted without regard to academic admissions standards and instantly disadvantaged competing against their better prepared peers in the classroom. For these college athletes, exploited for the economic gain of their coaches and institutions, the “student-athlete” label was always false news. College presidents, trustees, and alumni and fans, enamored with a winning team, simply turned a blind eye to the facts – preferring “good looks.” Higher education and athletics leaders have been complicit because the economics of the athletics plantation is kind to their back pockets. Unless Congress forces them to change course, “good looks” and NIL inducements will prevail over ethics.

Q: "Absolute power corrupts absolutely" - 19th century British politician Lord Acton. How do we prevent or discourage the abuse of the power now being pushed towards the conferences? Economically, academically and/or educationally?

A: The Drake Group believes that neither college presidents nor the athletics leadership of its competitive divisions has the courage or capability to deliver what should be the central promises to college athletes – a meaningful college degree and the considerable developmental contributions of extracurricular competitive sport to athletes as individuals in an environment safe from physical harm and mental abuse. We believe an educated and motivated Congress can make a difference but only after a careful multiyear study by experts in the field. We must educate Congress and the American public about the complex intersections of sport commerce and tax-exempt education institutions. It's been done before - [read about it here](#).

Q: What are the current harms to student-athletes from their new rights to monetize their NILs?

A: Not enough time has passed to be able to study this issue. We only know of anecdotal comments from athletic department staff members such as “our athletes are putting a lot of pressure on themselves to develop NIL deals” and the often-expressed warnings by administrators and coaches that NIL earning differences among team members might undermine team chemistry. It's too early to determine whether agents will try to take advantage of athletes or whether athletes are spending inordinate amounts of time fulfilling NIL-related responsibilities thereby exacerbating the existing time shortages for necessities such as sleep or fulfilling academic responsibilities.

Q: In the non-school market place there is no Title IX. If college athletes are employees, are we not moving from an educational activity governed by Title IX Educational Amendments to a Title VII pay model based on market value?

A: The question misses the point that college athletes can be both students and employees with Title VII and other employment laws coming into play. If athletes remain students under athletics eligibility rules, Title IX applies. Read Rick Karcher's excellent paper, [Big-Time College Athletes' Status as Employees](#) to learn more about this issue.

Q: What areas of competitive equity should be enforced in a new model?

A: Note that NCAA national governance rules and rules enforcement were not installed until the mid-1950's. Prior to that, the NCAA issued recommended guidelines and conferences were the primary rule-making agencies. Beginning in the 1950's, the adoption of NCAA national athletics rules were intended to ensure that college athletes were real students, legitimately pursuing meaningful college degrees – rather than imported “ringers” paid to bring their athletic talents to create winning college teams. Initially, these guardrails included the following seven basic integrity elements: (1) the athlete be academically eligible via GPA and degree progress requirements, (2) the athlete be enrolled as a full-time student, (3) years of eligibility for college sports correspond to years required to complete a degree, (4) athletics financial aid extend for the years required to complete a degree (such scholarships were initially required to be 4 year grants), (5) athletic scholarships aid be limited to legitimate educational expenses, (6) recruiting rules prohibit non-athletics staff from being involved in the recruiting process and that neither boosters nor athletics staff offer cash or other items of value or extra benefits as inducements to attend, and (7) professional athletes be ineligible for college sports participation. Initially, “competitive equity” was equal access to a legitimate “student” talent.

As big money and commercial success created a more expensive recruiting arms race, additional “competitive equity” guardrails were installed in the form of limits on the number of full scholarships, coaches, international trips, days on the road recruiting and similar restrictions. These mechanisms were expenditure caps that prevented the rich institutions from outspending those with fewer resources.

These integrity and financial bulwarks have weakened over time -- corrupted by the pursuit of economic and athletic success. For example, four-year scholarships morphed into one-year “employee-at-will” agreements allowing institutions to not renew grants when they find more talented athletes. Fake classes, directing athletes to less-challenging courses and majors, and “special admissions” practices (waiver of normal academic admission standards for under-prepared talented athletes) have undermined GPA and progress toward degree rules. The latest “backsliding” has been the enormous failure of the NCAA to enforce rules prohibiting the use of NILs as inducements and extra benefits and the involvement of alumni in making direct offers to athletes. And now the NCAA has given up its national governance system, divesting its rule-making, enforcement and distribution of revenues authority to self-interested competitive divisions. Presidents, college athletic directors, trustees and higher education leadership have left the playing field – no national guardrails are being enforced and the likelihood of Division I institutions or conferences controlling their own excesses is doubtful.

Q: What about the mega coaching salaries of today? Coaches are jumping from school to school and leaving their recruits and teams behind.

A: Antitrust laws currently prohibit capping coaches' salaries or arbitrarily restricting their movement as employees. Congress would have to craft a very narrow conditional antitrust exemption to enable higher education institutions to limit salaries and/or possibly tie eligibility for federal Higher Education Act funding to rules prohibiting excessive coaches' salaries, the building of athletes only facilities, or other expenditures. Such options require careful study and

consideration and lie at the heart of The Drake Group's call for Congress to act. Only Congress has the power to take these actions.

Q: Wouldn't it be possible for DI schools to model the DIII athletics model? Varsity sports but without the extreme spending or to move some non-revenue sports down to DIII?

A: Division I schools are already modeling Division II and III institutions by financially tiering their athletic programs but keeping all sports within Division I, primarily because NCAA rules do not allow institutions to split their sports among the various divisions and require a minimum number of men's and women's sports in order to compete in the NCAA Division I basketball Final Four and the FBS College Football Playoff. Financial tiering keeps selected priority men's and women's sports at the highest level of funding with few budgetary limits; second tier funded sports might be fully supported with regard to NCAA scholarship limits because of mandated Title IX requirements or to meet NCAA minimums that are conditions of Division I membership, but schools pay lower salaries to less than a full complement of coaches allowed under NCAA rules and/or provide less generous operating budgets; and third tier funded sports may have fewer coaches and even smaller operating budgets. Few institutions are supporting all sports at the highest levels permitted. Title IX requires that equal percentages of male and female athletes be placed within such tiers – a mandate often ignored by colleges and universities. Dropping sports out of the varsity athletics program and into the club sports program is simply not an option for two reasons: (1) if this happens to a women's sport, a Title IX lawsuit against the institution is highly likely because most institutions are currently not complying with Title IX participation requirements and (2) alumni who played the dropped sport get very angry, creating bad press and threatening to withdraw financial contributions to the larger institution.

Q: Does it make sense for Group of Five, the bottom of the Power Five, or the FCS to subsidize FBS football to the extent they do, at the expense of other sports and in the face of the severe financial and enrollment challenges it is facing? Is the financial situation as dire for Division II and III institutions?

A: The cost of Division I football and the annual financial losses at these institutions are significant ([click here for a quick *College Sports Economics 101* review](#)). Most observers attribute institutional aspirations to join Division I, despite the certainty of major annual operating losses, to the false belief that athletics is a front porch driver of relationships with wealthy alumni and advances the value of the institutional brand. The financial challenges are not just about Division I. The extensive subsidization of more than 98% of 2,000 athletics programs in higher education institutions (only 20-24 make more money than they spend on an operating basis each year) then becomes a burden borne by students who pay tuition and mandatory student activities fees and whose average debt upon graduation exceeds \$30,000.

There are some institutions who strategically utilize athletic programs to advance enrollment goals. For example, Division II institutions regularly use the award of partial scholarships to athletes to obtain close to full tuition paying students and coaches are recognized as prime contributors to enrollment with regard to their athletics recruiting roles. In Division III, although no scholarships are awarded, the athletics coach is considered to be an enrollment driver, especially at smaller institutions where athletics participants constitute a large percentage of total enrollment. A

snapshot of the extent of each institution's athletic program subsidy can be obtained on the [DOE Equity in Athletics Disclosure Act database](#).

Q: Title IX, as currently written, is essentially unenforceable...how do colleges and universities deal with that? How do colleges and universities justify, or sustain, intercollegiate athletic programs that overtly treat college athletes disparately?

A: Title IX has been enforceable in multiple ways targeting individual institutions: OCR must respond to the filing of Title IX complaint alleging unequal treatment and students bring lawsuits against their institutions. However, correcting sex inequality in sport by depending on these mechanisms will continue to have a negligible impact given the [90 percent of over 2,000 institutions most likely still in violation of Title IX](#) fifty years following its passage. At this rate, it would take hundreds of years to achieve gender equity in high school and college sport.

It is clear that higher education and athletic governance organization must promulgate policies requiring Title IX compliance as a condition of education institution accreditation, athletic organization membership, or eligibility for post season championships – mechanisms which would apply to all higher education institutions. What is needed is the reestablishment of the now defunct NCAA Division I certification program which carried a membership suspension penalty for failure to remedy identified deficiencies or a new rule requiring each member institution to undergo an external third-party Title IX evaluation every three to five years. This is not happening because college presidents and athletics administrators – the individuals responsible for demanding such policies, know they are out of compliance and are willing to take their chances given the low risk of a Title IX lawsuit or complaint. This risk is low because, unless the institution completely eliminates a sport program, college athletes and their families seldom complain because they fear artful retaliation again the athlete: loss of a scholarship, a starting position, or the attention of a coach. This is another reason why Congressional intervention is important because Congress can amend the Higher Education Act to condition receipt of federal funds on the conduct of such evaluations or take similar actions.

Q: Do you see more alternative elite sport development opportunities outside the educational space developing in the US due to these changes?

A: It is highly unlikely that U.S. educational institutions will cease to embed elite athletic programs within their extracurricular programs. The truly important reasons why they are there is that they have positive developmental effects on athletes who participate and, unlike many sport programs outside the educational space, are free to most children. However, it is clear that these programs require guardrails to control expenses and abuses and that collegiate institutions in particular have not been committed to addressing these needed reforms.

We are also seeing signs that non-school programs targeting top prospects for NFL and NBA play are being established, with salaries and some with educational benefits that would create an alternative for athletes who do not want to be committed to full-time student status and the pressures of combining elite athlete aspirations with a meaningful college degree. This is a positive development.

Q: Are we getting closer to college athletes being declared employees (recent NLRB statement) and college athletes collectively bargaining for wages, benefits and working conditions? Do you believe that college athletes can collectively negotiate as a non-employee union and act in ways to better manage NILs and transfer freedoms.

A: U.S. House and Senate companion bills (identical language in House and Senate versions) have been filed in the 117th Congress (current session) to establish collective bargaining rights for college athletes, define a college athlete on scholarship as employee, and specify that the NLRB must consider athletes within an athletic conference consisting of public or private institutions as a bargaining unit with NLRB jurisdiction.

SENATE

S.1929 — 117th Congress (2021-2022) College Athlete Right To Organize Act

Sponsor: [Sen. Murphy, Christopher \[D-CT\]](#) (Introduced 05/27/2021) Referred to the Senate Health, Education, Labor, and Pensions committee.

HOUSE

H.R.3895 — 117th Congress (2021-2022) College Athlete Right to Organize Act

Sponsor: [Rep. Bowman, Jamaal \[D-NY-16\]](#) (Introduced 06/15/2021) Referred to the House Education and Labor Committee

If adopted, this statute could be a “game changer” because the current National Labor Relations Act applies only to private institutions and scholarships rather than cash salaries would ignite the right to collectively bargain. No one knows whether athletes would actually act to use such a right.

Non-union athlete organization efforts to date have been fleeting, most recently in response to being ordered to resume play during the Covid19 pandemic and athletes joining forces with campus-wide Black Lives Matter protests in response to the death of George Floyd. Athletes presented lists of demands objecting to early returns to campus during the pandemic, campuses retaining monuments and rituals celebrating leaders of the Confederacy, etc. It is not clear whether these groups still exist or whether other athletes will organize to demand athletes’ benefits like long-term medical care, guaranteed four-year scholarships, etc.

Generally, efforts to organize athletes have not been successful for several reasons:

- they are a transitory population, changing their composition every year and completely rolling over every 4-5 years limiting the possibility of developing experienced and consistent leadership;
- the power imbalance between athletes and coaches is significant with athletes fearing loss of scholarships, starting positions, or retaliatory treatment if they object to the wishes of coaches;
- treatment (lavish facilities, training tables, etc.) of athletes by colleges and universities is so much better than their high school experiences that they do not feel “exploited”;
- they are uneducated about the mechanisms of educational exploitation and surrounded by staff who are not about to provide that information; and
- most do not have the time or energy to be “advocates” because of athletics-related time demands, classroom demands, lack of sleep, etc.

Q: Female athletes have been huge beneficiaries of NILs. How do you view NILs and how it has helped women's sports? Do you see women's college sports continuing to grow and being publicized like men's sports.

A: [Opendorse data](#) covering the first six months of NIL activity (July-Dec., 2021) do not support the characterization that women have been huge beneficiaries of NILs. There are also concerns related to historical inequities because colleges and universities have not provided female athletes with the same publicity, promotion or television exposure enjoyed by male athletes. Further, NIL booster collectives have placed significant emphasis on men's basketball and football recruiting assistance compared to women's sports. For more details, read [Title IX and the NIL Marketplace: Subterfuge or Opportunity to Remedy Historical Inequities](#).

3. OUR NEXT ISSUE: WEBINAR #9 - "Lack of Accountability for Athlete Abuse in College Athletics"

SAVE THE DATE! Thursday, March 24, 2022 from 2:00-3:30pm.

Generally, no standards exist for the certification of coaches in the United States. Therefore, many coaches lack the training and credentials necessary to practice model pedagogy. Rather, they emulate the pedagogy of those who coached them as athletes or employed them as assistant coaches. Pressured to produce winning teams, they transfer that pressure to the college athletes who actually play the game. They demand that athletes commit to year-round training, even sacrificing study time and sleep to fulfill unrealistic sport demands – watch more film, lift more weights, increase repetitions, and run or swim more laps, ignore the pain of injuries or push through exhaustion. This prevailing 'more is better' athletics culture demands that the athlete be stoic and uncomplaining as the system takes its toll on physical and mental health. Fearful of losing their scholarships, starting positions, or even the time and attention of their coaches, athletes often remain silent when coaches mistreat them. When coaches physically or verbally abuse athletes, assistant coaches or athletic trainers who observe the abuse are silent, fearful they will lose their jobs. As long as coaches lead successful programs, athletic administrators leave coaches alone, attending games to cheer them on, but seldom supervising, observing a practice, or criticizing coach conduct. How do we address this state of affairs?

4. LINKS TO RECORDINGS OF PREVIOUS WEBINARS

[CLICK HERE](#) to enter The Drake Group Education Fund Video Library for recordings of all previous webinars.

WEBINAR #1 -- "Wild West or Brave New World – National Experts Share Their Thoughts on College Athlete Compensation"

WEBINAR #2 -- "Millionaires or Minimum Wage? Current and Former College Athletes Speak on Athletes' Compensation"

WEBINAR #3 -- "Experts Speak Out on College Athletes' Mental Health"

WEBINAR #4 - "The Transgender Athlete in Girls' and Women's Sports: The Collision of Science, Law, and Social Justice Explained"

WEBINAR #5 -- "Title IX and the NIL Marketplace: Subterfuge or Opportunity to Remedy Historical Inequities?"

WEBINAR #6 -- "Keeping Everything We Love About Collegiate Sport While Fixing Its Failed Governance Structure"

WEBINAR #7 -- "A Continuing Disgrace: Addressing Intercollegiate Athletics Race Issues"

WEBINAR #8 -- "The Disintegration of the NCAA: The Price of Rejecting National Governance"

5. WAYS YOU CAN HELP

If you believe **The Drake Group Education Fund** is doing good work, please also consider making a tax-deductible donation to support our webinars and educational research and programs work. You can donate and learn what we do [HERE](#).

Interested in becoming a change agent by working with **The Drake Group**, a sister organization of The Drake Group Education Fund? We need volunteers to contact their senators and representatives to advance collegiate athletics reform legislation. Learn about legislation and [VOLUNTEER/JOIN HERE](#).

6. THANKS TO OUR FEBRUARY 24 PANELISTS!



MODERATOR, B. DAVID RIDPATH, Associate Professor of Sports Business at Ohio University, College of Business; Past President, The Drake Group; research areas include intercollegiate athletics administration, governance, and rules compliance including ethics and components of the NCAA legislative, enforcement, and governance process.



MARQUITA ARMSTEAD – Executive Associate Athletic Director and Senior Woman Administrator, University of Nebraska; member of the Big Ten Sport Management Council; oversees men’s basketball and volleyball, athletic medicine, sports psychology, the athletic performance lab, strength and conditioning, performance nutrition, Title IX and gender equity; formerly Senior Associate Director of Athletics /Senior Woman Administrator at the University of South Florida.



JASMINE ELLIS, Associate Athletic Director for Student-Athlete Academic Services, University of Akron; oversees academic services team to ensure student-athlete eligibility, progress toward degree completion, and graduation; formerly Associate Director for Athletics for Compliance and Senior Woman Administrator at Central State University.



OLIVER LUCK, Former Chief Executive Officer and Commissioner of the XFL and NFL Europe; former Executive Vice President for Regulatory Affairs and Strategic Partnerships of the National Collegiate Athletic Association (NCAA); former Athletic Director, West Virginia University; currently a member of the National Football League Player Safety Advisory Panel.



JULIE SOMMER, Attorney with fifteen years of experience litigating civil, administrative and criminal matters at the administrative, trial, and appellate levels; member of The Drake Group Board of Directors; an active member of the Washington State Bar Association, King County Bar Association and Sports Lawyers Association; former NCAA All-American swimmer at the University of Texas at Austin, member of an NCAA National Championship team, USA Swimming National Team member and listed among the top ten in World Swim rankings.



ANDREW ZIMBALIST, Robert A. Woods Professor of Economics, Smith College; President-Elect, The Drake Group; author of *Unpaid Professionals: Commercialism and Conflict in Big-time College Sports* (1999), *The Economics of Sport, I & II* (2001), *Unwinding Madness: What Went Wrong with College Sports and How to Fix It* (2017) with Gerry Gurney and Donna Lopiano, and *Whither College Sports* (2021).