THE DRAKE GROUP EDUCATION FUND
Realizing The Promise Of College Athletics

FOLLOW-UP NOTES

"Collegiate Athletics Reform Bills Being Considered by Congress"

The Drake Group Education Fund Webinar Series – Critical Issues in College Athletics
Hosted by
2aDays RATINGS + TIPS FOR STUDENT ATHLETES

Thanks for attending or registering for our November 16, 2023 webinar on critical issues in intercollegiate athletics. A regular feature of our webinar series is "Follow-Up Notes" which provides links 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, and information on our next webinar.

1. Webinar #29 RECORDING

In case you missed any part of the November, 2023 webinar, you may access the recorded video here:

"Collegiate Athletics Reform Bills Being Considered by Congress"
ACCESS RECORDING HERE

2. UNADDRESSED QUESTIONS FROM WEBINAR ATTENDEES

Following are answers to questions from the audience symposium that panelists did not have time to address. Responses are from The Drake Group Education Fund and The Drake Group experts and/or panelists.

Q1: Student athletes should not be penalized as a team to miss playoff games for something done by a coach or one player. Individuals should be penalized. With NIL and for coaches, they could be penalized monetarily.

A1: We assume these questions were asked within the context of bills discussed. The NCAA Accountability Act (Reps. Kustoff/Harder) includes a provision that any penalized individual or institution has the right to appeal to an arbitration panel for independent review and a final decision. In addition, the bill would mandate that "penalties issued against member institutions for bylaw infractions shall be equitable with respect to severity of the infraction and the member institution's history of infractions." With regard to NIL bills, several proposed bills permit fines, damages, and withholding conference distributions. The Bilirakis bill prohibits penalizing an athlete who cooperates in an investigation.

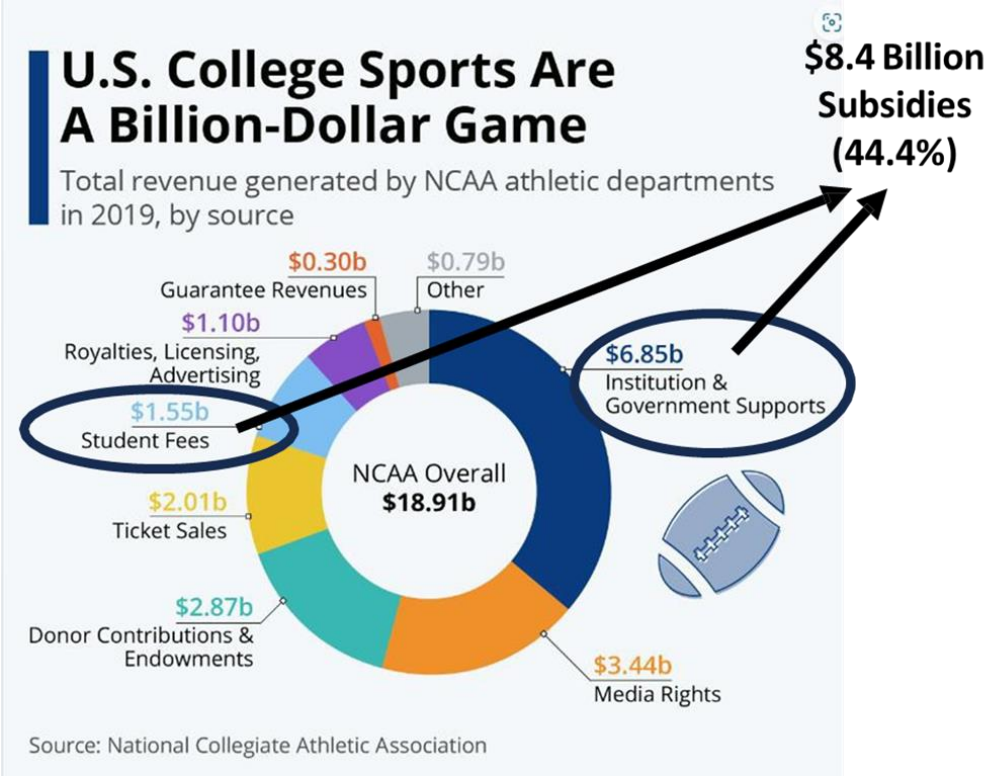
Q2: If students end up becoming employee students like graduate students, wouldn't they have to give up their extra scholarship money and free food, etc., and only get free tuition?
A2: A grant-in-aid is a waiver of a student's obligation to pay the university for tuition, room, and board, and/or books, which is agreed to pursuant to the terms of a financial aid agreement. If universities were to enter into employment agreements, then the terms of compensation would be whatever the terms of the employment agreement provide, which could include (in addition to salary) tuition, room, and board and/or books (i.e., "perks").

Q3: What does a unionization model look like? Specific teams, specific sports, specific conferences?
A3: In order for there to be collective bargaining, the formation of multi-employer bargaining units is necessary due the nature of league sports but that cannot happen because the National Labor Relations Board (NLRB) doesn't currently have jurisdiction over public universities. However, if the NLRB were to somehow obtain such jurisdiction (e.g., by Congress amending the National Labor Relations Act), an athletic conference would most likely meet a "community of interest" analysis for the creation of a multi-employer bargaining unit. For an in-depth discussion, see Karcher, Richard. (2023). "The NCAA as joint employer? Let's be real." *University of Memphis Law Review*, *53* (4), pp. 893-927. Retrieve from: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4450428.

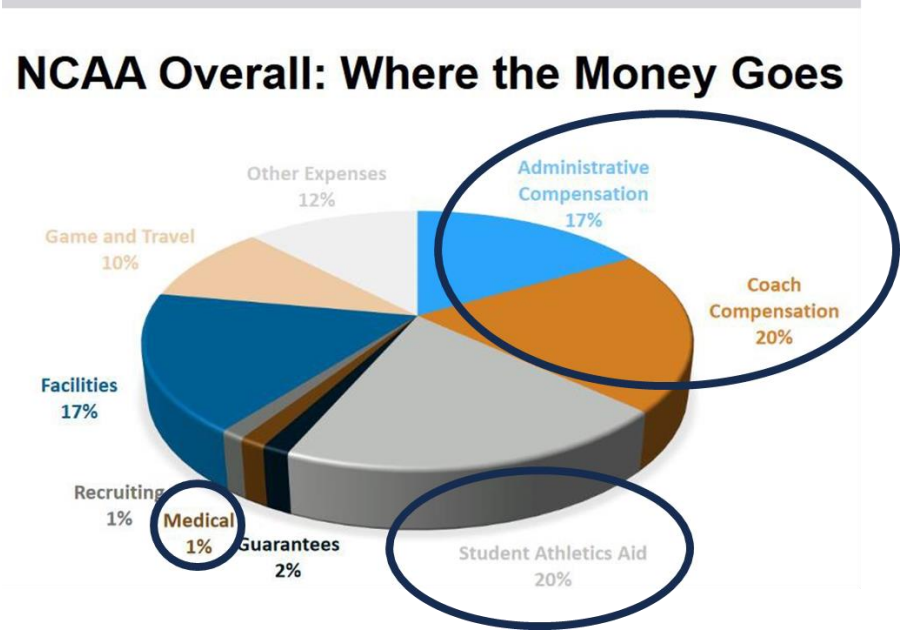
Q4: What do my undergraduate student-athletes most need to know about all this legislation, if anything? And what do my undergraduates who are NOT student-athletes most need to know about it, if anything?
A4: All college students should be concerned about the uncontrolled costs of intercollegiate athletics programs which come into play if NIL bills create increased costs. For example, if the NIL bill mandates the payment of athletes' insurance and medical expenses, or if institutions seek to pay athletes for use of their NILs from their collegiate sports television rights fee revenues, or if the courts require colleges to pay college athletes as employees, etc. Such cost increases may result in elevated student tuition and/or fees because most athletic programs are subsidized from these sources. Only 20-24 athletic programs per year of the 2,000 institutions of higher education in the USA with athletic programs generate more revenues than they spend on an operating basis. This means that over 98 percent of these programs are subsidized by institutional general funds (tuition dollars) and mandatory student athletic fees that are paid by all students. It is significant to note that students leave college with $39,000 in average student loan debt. It is also instructive to note that not all athletes are on full athletic scholarships that cover the total cost of education. In fact, if an institution awards athletics scholarships, more athletes are on partial rather than full scholarships and many do not receive athletics grants.

Congress is interested in these financial issues because the federal government is providing the student loan funds that are indirectly financing intercollegiate athletic programs. Congress cares about controlling student debt. In addition, if these cost increases are substantial, it is possible that institutions will respond by eliminating non-revenue or low-revenue sports and transfer those savings into the new expense

categories. All athletes and non-athletes should view a quick video "The Economics of College Sport" which is a predicate to any serious discussion about college sport financing, lavish coach salaries, or paying college athletes. Consider the fact that college sport operates on $18.9 billion in revenues of which 44.4 percent are subsidies paid for by students.



Where does this money go?



Source: National Collegiate Athletic Association

As indicated above, 37 percent of expenses are for coach and administrator salaries. Only 20 percent goes to fund college athlete scholarships and only one percent to fund athlete medical expenses. It appears from the bills discussed, that Congress cares about protecting the health and well-being of students by mandating institutional payment of medical expenses and the establishment of medical trusts. Few people realize that most athletes are required to use their own or their families' insurance policies to pay for athletics injuries and there is no current disability insurance coverage for the long-term costs of brain trauma -- dementia, Parkinson's, Alzheimer's, or chronic traumatic encephalopathy (CTE) -- the symptoms of which don't typically appear for 10, 20, or more years.

Some of the bills reviewed address gender inequities indicating that the federal government also cares about federal laws like Title IX which are not being complied with by most athletic departments. Female athletes are shortchanged over $1 billion dollars in scholarships each year and 90 percent of all athletic programs are not in compliance with Title IX. Now we have NIL booster collectives funneling 90% of their NIL employment dollars to men's football and basketball to ensure their alma maters win the recruiting wars – effectively laundering booster contributions to evade Title IX.

All of the bills covered in Webinar #29 illustrate the concerns of Congress and reflect the struggle of this legislative body in crafting bipartisan solutions that will better protect college athletes, achieve the goal of gender equity, and control costs of higher education (athletics student tuition and fee subsidies). Developing good laws is difficult and time consuming and important for all students to understand.

Q5: If the progression of state laws providing inducements to talent and protection from enforcement a la TX, OK, MO, AR, NY, CO, et al., continues when state legislatures re-open in January, state control over the Power Five, without regard to the power and influence of conferences, is likely to prevail. Why are you focusing on the 118th Congress at all, when 100% of the legislative action is at the state level?

A5: Almost all of the federal NIL bills reviewed include provisions which preempt state laws which lack uniformity, which (and one may disagree with) raises an issue in the context of interstate league sports that seek uniform rules for competitive balance purposes.

Q6: Changes to recruiting conditions due to NILs are relatively orderly and have been, or are being, well assimilated into the recruiting systems previously employed by colleges. Why reference these changes and the ensuing behavioral response as "chaos"?

A6: We are not using "chaos" to refer to changes to recruiting systems caused by NIL. Rather, we point to the fact that the NCAA enforcement system is frozen or currently inoperable with regard to enforcing rules related to inducements and extra benefits because of the NCAA's fear that exercising any economic controls over NILs or outside employment generally, will result in litigation. Further, as previously mentioned, the operation of NIL collectives has raised significant questions regarding institutional entwinement with these groups that result in evasion of their Title IX obligations because these groups are operating to advance recruiting, financial aid, publicity, and promotional benefits favoring male athletes in football and basketball at single selected institutions and many are providing NIL employment or benefits unrelated to fair market value.

3. OUR NEXT WEBINAR – "NIL EDUCATION – ARE COLLEGIATE ATHLETICS PROGRAMS DELIVERING?"

OUR NEXT FREE WEBINAR! Thursday, December 7, 2023 – 2:00-3:30 p.m. EST

We are in the third year of college athletes being allowed to profit from their names, images, and likenesses (NIL). Many college athletes have taken advantage of their new opportunities entering various types of NIL deals. While NIL has opened the door for college athletes to reap some of the financial benefits of their labor, it has also left college athletes needing access to educational resources to better navigate these new opportunities. In addition, some state laws require that college athletes be provided with NIL education. For example, Florida's NIL law requires that college athletes be provided financial literacy and life skills workshops. Despite similar requirements in various states, an NCAA survey reveals that 39 percent of women's college athletes and 42 percent of men's college athletes want more resources to assist with navigating NIL. College athletes need assistance with financial literacy and understanding contract provisions. Our stellar panel will address whether current NIL education programs meet athletes' needs and requirements of state NIL laws. Are changes in current NCAA rules or federal laws needed to permit institutions to better meet athletes' NIL needs?

REGISTER HERE

4. ACCESS RECORDINGS OF PREVIOUS WEBINARS

CLICK HERE to enter The Drake Group Education Fund Video Library for recordings of all 29 previous webinars including the full proceedings of the 2022 and 2023 Allen Sack National Symposium.

5. QUESTIONS ABOUT THE DRAKE GROUP EDUCATION FUND AND 2aDAYS.com

The Drake Group Education Fund (TDGEF) is a new 501(c)(3) non-profit education sister organization of The Drake Group (TDG) whose mission is to ensure that the promise of college athletics is realized for all stakeholders. TDGEF produces *The Allen Sack National Symposium on Integrity in College Sports* and the *Critical Issues in College Sports Webinar Series*, conducts fact-based research on intercollegiate athletics and develops position papers and other educational materials that influence public discourse on current issues and controversies in college sport. To access a full library of print and video educational materials on current issues in intercollegiate athletes, visit **www.thedrakegroupeducationfund.org**. All educational materials are available free of charge. If you believe The Drake Group Education Fund is doing good work, please also consider making a tax-deductible donation to support our webinars, educational research, and programs. You can donate and learn what we do **HERE**.

The Drake Group (TDG), a sister organization to TDGEF, is a 501(c)(4) non-profit organization whose mission is to educate policymakers and advance legislative initiatives that foster academic integrity and athlete well-being in intercollegiate athletics. For the most current information on The Drake Group and college athletics related bills being considered by Congress, visit TDG **HERE**. TDG needs volunteers to contact their senators and representatives to advance collegiate athletics reform legislation. Learn about legislation and **VOLUNTEER/JOIN HERE**.

2aDays.com. Interested in helping high school and college athletes learn more about athletic programs at institutions they are considering attending – and the ratings of coaches in these sport programs? Check out our webinar partner **2aDays.com**. An important note from 2aDays: It is also important to mention, given the focus of Congress on athlete health and welfare, that 2aDays gives athletes the opportunity to rate their coaches and also view ratings of athletes of other coaches. This information could prevent an athlete from playing in unhealthy education environments.

6. THANKS TO OUR WEBINAR #29 PANELISTS

JULIE SOMMER (Moderator), Executive Director, The Drake Group Education Fund. Sommer is an Attorney and former The Drake Group President-Elect; expert on the status of state NIL bills, The Drake Group liaison to the Uniform Law Commission that developed a model NIL statute, and author of a 2022 comparative analysis of federal NIL bills. Julie is a member of the Washington State Bar Association, King County Bar Association and Sports Lawyers Association; a former NCAA All-American swimmer at the University of Texas at Austin, a former member of an NCAA National Championship team, USA Swimming National Team member and was listed among the top ten in World Swim Rankings.

RICHARD T. KARCHER, J.D., Professor in the Sport Management Program, Eastern Michigan University, where he teaches sport governance and regulation, sport ethics, NCAA compliance, international sport, and introduction to research in sport management. He is a member of the Drake Advisory Council and Eastern Michigan's NCAA Faculty Athletics Representative. Professor Karcher is also a lecturer in the Transformative Coaching and Leadership Program at UCLA where he teaches a graduate sport ethics course. His research and scholarship focuses on labor and ethical issues involving athletes and he is a co-author of two textbooks on *Sports Ethics for Sport Management Professionals* and *Sports Law for Sports Management*. He is frequently retained as a damages expert in cases involving athletes and has also provided expert testimony before Congress. Karcher serves on the editorial board for the *Journal of Legal Aspects of Sport*. Prior to entering academia, he was a partner at Honigman LLP in Detroit where he practiced corporate law and represented and counseled athletes. He also played three seasons in the Atlanta Braves farm system.

DONNA A. LOPIANO, Ph.D., President, Sports Management Resources and current President of The Drake Group. Dr. Lopiano also serves as an Adjunct Professor of Sports Management at Southern Connecticut State University. She was the Chief Executive Officer of the Women's Sports Foundation (1992-2007) and served for 18 years as the University of Texas at Austin's Director of Women's Athletics. Prior to Texas, Lopiano served as an Assistant Professor and Assistant Athletic Director at Brooklyn College of the City University of New York. Recognized as one of the foremost national experts on gender equity in sport, she has testified about Title IX and gender equity before three Congressional committees and has served as an expert witness in over thirty court cases. Lopiano received her bachelor's degree from Southern Connecticut State University, her master's and doctoral degrees from the University of Southern California and is the recipient of five honorary doctoral degrees.

JAYMA MEYER, J.D., Counsel, Simpson Thacher & Bartlett; Visiting Clinical Professor, Sports Law, Indiana University; member of the Board of Directors, Sports Lawyers Association; Emeritus Member, Board of Directors, National Women's Law Center; Emeritus Trustee, former Vice President, Women's Sports Foundation. She is an experienced antitrust litigator and currently a Title IX advocate litigating and negotiating Title IX settlement agreements with high schools throughout the US including litigating a landmark class action Title IX case against the Hawaii Department of Education; has co-counseled with the San Francisco Legal Aid at Work, California Women's Law Center, Hawaii ACLU and National Women's Law Center on Title IX matters; ranked among the top ten butterfly swimmers in the world in the 1970s.

B. DAVID RIDPATH, Ed.D., Professor of Sports Business at Ohio University. Prior to Ohio, he was an Assistant Professor of Sport Administration at Mississippi State University and has over 15 years of practical experience in intercollegiate athletics in administrative and coaching capacities at Marshall University, Weber State University and Ohio University. Dr. Ridpath is often cited by major media outlets such as the *New York Times, Time Magazine, CNN and ESPN* as an expert on NCAA and intercollegiate athletic matters. He has appeared before Congressional committees and served as an expert witness in numerous cases involving intercollegiate athletics and college athlete rights. An accomplished researcher, he has authored over 30 academic journal articles, over 10 academic book chapters and monographs, and two books. His latest book is entitled *Alternative Models of Sport Development in America*: *Solutions to a Crisis in Education and Public Health.*

BRANDON SYKES, J.D., is the Associate Director of Admissions at the University of Florida Levin College of Law, where he has helped enroll three of the most diverse classes in the history of the law school and served on the school's Diversity Committee. Sykes is a former Compliance Coordinator - Athletics Risk Management and Compliance Services, at the University of Texas at Austin where he was the lead administrator for football, men's and women's basketball, baseball, and women's volleyball, delivering rules education programs and monitoring compliance with NCAA recruiting and athlete benefits requirements. His volunteer non-profit work includes board service on behalf of Community Spring, a grassroots organization dedicated to economic justice, and the mentoring of college athletes as part of the University of Oregon student-athlete mentor program. He was a four-year football letterman at Davidson College where he earned a B.A. in Sociology. His J.D. is from the University of Georgia School of Law.