

PROTECTING YOUR POSSIBILITIES PODCAST WITH LUKE FEDLAM

Episode 23: New Year, New Changes to College Sports | Jan. 13, 2021

The following is a transcription of the audio podcast recording. It is largely accurate but in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors.

Luke: I'm sports attorney Luke Fedlam, and welcome to the Protecting Your Possibilities podcast. Each conversation we focus on sharing information and having conversations around how athletes can best educate and protect themselves or their life outside of their sports.

Thank you so much for tuning in to the protecting your possibilities podcast. I am excited to say to you all, Happy New Year, Happy 2021. I will say wow, so much has happened in the first couple weeks of this new year. But it's a new year. So we can we can celebrate the 2020s behind us. And we're off to a brand new start in 2021. So I wish you and your family the very happiest of New Year's.

So let's just talk about 2021. I think what we're going to see over the coming year are some of the most influential decisions to be made in college sports in decades and potentially ever. That's not hyperbole, that really is a belief that we're going to see some significant change in the college sports landscape in ways that we haven't seen before.

So let's break that down a little bit. I think if you've listened to the protecting your possibilities podcast in the past, then you know that I really spend a lot of time talking about name, image and likeness at the college level. Because of what I do, working with professional athletes to protect and educate professional athletes, a lot of that work comes around athletes who are selecting agents to work with athletes who have opportunities for endorsement deals and marketing opportunities. And we review and analyze those agreements, those contracts before they sign them. And if you can imagine, there are a lot of times where because money is involved, athletes are taken advantage of or people try to take advantage of athletes. And if you can imagine that at the professional level, you can only imagine what the potential is for athletes being taken advantage of at the college level when compensation comes into play around name, image and likeness.

And so I really do like spending some time here because again, this podcast is all about protecting the possibilities that athletes have. And I want to just spend some time focusing on just this massive shift in college sports for college student athletes to potentially be compensated through name, image and likeness. So if you want to know more about what name image and likeness actually is, then you can go back to some of my past podcasts you can hear more about kind of what name image and likeness is. But let's just look at it like this name, image and likeness at the college level really is the idea that student athletes can start to be compensated for doing those things that non athletes, students have been able to do historically, start a business get compensated for lending their name, image and likeness to a particular product or service, or otherwise taking on opportunities to make money. And historically, because of the belief of amateurism existing in college sports, student athletes to this point, haven't been able to be compensated for the use of their name, image and likeness.

So that's all changed. And or rather, I should say that's in the process of changing and it started because of some state laws going into effect. California started with 206. That is set to go into effect in 2023. But we've heard from California lawmakers that they are looking to amend that to go into effect much earlier, as they look to allow for student athletes to be able to have kind of for almost free market ability to be compensated for their use of name, image and likeness.

And as we all know, Florida's law is set to go into effect on July 1 of this year. So that being said on Monday, January 11, the Division One Council was set to have a vote on name image and likeness rules and allowing for student athletes to begin being able to be compensated for the use of their name, image and likeness starting this summer. That vote was postponed indefinitely. There's been no announcement as to when a vote might actually take place. And the statement is the reason why they've postponed this vote is due to external factors and it caused the council to postpone this vote on name image and likeness rules.

Now, this past weekend, the president of the NCAA, Mark Emmert told The Associated Press that he recommended that the NCAA postpone the proposals around both name image and likeness and the transfer portal because of letters that he'd received from the Department of Justice around potential antitrust violations.

Now, this whole idea around antitrust then leads to a Supreme Court case that the Supreme Court will be hearing oral arguments on later this spring of the NCAA vs. Austin. And this idea is around the fact that the Ninth Circuit has held that the NCAA can't restrain payments that student athletes should be able to receive as it relates to education based payments or compensation.

So that's a lot. That's a whole lot to unpack. So let's kind of break down what all of this actually means then. So we know that there's the Supreme Court case pending. And we also know that when you have various states coming out with their laws around name, image and likeness, the NCAA is in a place where they argue that they can't have free and fair competition, when different states have different advantages as it relates to recruiting because of the laws that those states have in effect.

So if I'm a student athlete, and I have the ability to go to Florida and be compensated for anything that I do, or want to do, or put my name to, then there's a higher likelihood that I'm going to choose to go play sports at a school within the state of Florida, then potentially, the state of Ohio, where there is no legislation that allows for me to be compensated for the use of my name, image and likeness.

And so now the NCAA is looking at this unfair competition, because obviously, more student athletes, and more elite student athletes are going to go to places where they can be compensated. So this has created really an interesting kind of dynamic and when I like to read a lot of this, and I've heard from different folks and athletic departments that have talked about how, they want to see these name, image and likeness changes go into effect, but the timing just isn't right, or that they've had to focus on COVID, and therefore haven't been able to really focus on what, you know, the broader rules of name, image and likeness should be. I hear that COVID has most definitely impacted the entire sports world, and society at large, kind of our traditional norms of what normalcy looks like. So absolutely, it's had a devastating and massive impact on society.

That being said, California's legislature passed SB 206 early fall of 2019. And so there has been a knowledge that name image and likeness changes, we're going to have to come for

quite a while now, almost a year and a half at this point. And so the idea that, you know, schools or the NCAA hasn't been ready for this. It's tough, right? It's tough, because there's there been so many different things going on.

But at the same time, let's just be honest, right? There's a lot of concern from a lot of folks around the idea of compensating student athletes for the use of their name, image and likeness. And I don't think anyone would say that the NCAA has been racing to try to get this compensation, or the regulations around potential name, image and likeness, compensation for student athletes at the forefront. So the fact that this vote that was to occur yesterday has been delayed, I don't think really is a surprise.

What's going to be interesting is to understand then, when it might take place, and how these changes are going to happen. So what we know that we have right now is the state of Florida, their rules and their laws around name image and likeness compensation set to go into effect on July 1. So we are less than seven months away from a state having those laws enacted. California legislators, the ones who actually proposed bill 206 have come out in the media to say that they want to amend that legislation so that they have the ability to go into effect much sooner than 2023 as it's set right now, and potentially go into effect this year as well.

Interestingly, as the NCAA has been lobbying Congress for safe harbor laws, and for preemption from various lawsuits related to different state laws, they've been trying to figure out how to make sure that the association at the NCAA itself can be protected through all of this.

So there's a lot going on, there's a lot to figure out at this stage in everything. But here's the bottom line. And I always like to go back to what I have been trying to shout from the mountaintops, we know that student athletes are going to be able to be compensated for the use of their name, image and likeness. It's a matter of just when, right and what it looks like is, it looks like this is most likely going to happen sometime here in 2021.

That being said, what I want to see schools and institutions put into place and what I want to see Congress put into place as they're contemplating national legislation around name image and likeness is an education requirement for student athletes to receive practical real world education around these changes that are coming.

So we know that student athletes are going to have opportunities to sign on to marketing deals, we know that student athletes are going to have opportunities to make money off of running their own camps and clinics or going back to their hometown and tutoring or coaching parents or student athletes at the high school level who want to have a shot at playing D1 lacrosse or swimming or diving or what have you. And so because we know that student athletes at the college level are going to be able to be compensated and receive compensation. And we know that there are certain skills that they're going to need to develop, they're going to have to understand how do they make decisions around all this happening with name image and likeness around them? How are they going to make decisions around what they're going to say yes to or no to who they're going to want to work with or not work with?

They're going to have to understand the due diligence that comes with it, are they going to work with a particular marketing agent or advisor or business manager or financial advisor, the due diligence around the people who want to work with them, and the due diligence around the companies or the brands that may want to work with them as well. And we're not just talking about the blockbuster national brands, the Nikes, Adidas, and Gatorade and others, right?

I mean, we're talking about what's the local pizza place on campus that wants to pay a particular athlete to come in and be in their pizza shop during certain times signing autographs, or just talking to customers, or have their picture on fliers that they put up around campus that so and show the athlete loves this particular pizza company, especially if there's competition with a different local pizza chain nearby.

It's this idea of the due diligence of understanding and their analysis of the types of opportunities that they want to take due diligence and understanding what that even means is going to be critically important. There's the money side of things, and just understanding the financial management aspect, the business financial management, understanding this notion that if a particular athlete says "Hey, I want to set up an LLC, to protect me and provide some liability protection, and maybe I have some expenses that I can run through the business."

And so they set up this LLC, making sure that they understand the financial business, financial management of that entity, understanding that okay, so I'm getting paid in gross directly to my entity. That's not just another personal bank account that I can just go in and out of and take money out of whenever I want to, that there are requirements to ensure the corporate formalities so that I can continue to have those liability protections in place, that I have to make sure that I'm treating the financial side of the business the right way, that I'm not co-mingling my funds with business and personal funds.

They're going to have to understand that and they're going to have to understand contracts. So understanding what it means to sign a contract with a business manager with a marketing agent, what it means to sign a contract, you know, with someone who's going to, you know, look to find opportunities for me, how can I terminate that contract? What are they supposed to provide to me? How do I compensate them?

All of these aspects of learning are going to be critical with any type of name image and likeness changes that come into play. So the bottom line is we know these changes are coming. We know that Florida has their law is set to go into effect in July of this year. We know that the Supreme Court is hearing the NCAA vs. Austin case and oral arguments most likely in the April May timeframe. And then it'll be a few months after that, that we'll hear what that ruling is. And that ruling, depending on what they say, and how broad they go, could have a massive impact on what the NCAA is allowed to do or not do here.

And when you think about that, that's, that's going to change things that potentially has the potential for changing things. And we really don't know, we really don't know how the Supreme Court is going to rule here. Because this isn't the traditional norms of conservative versus liberal leaning perspectives. You could very easily have someone who is conservative take the approach that as a conservative, an individual should have full free market capabilities to make as much money off of their name, image and likeness as possible. Or that same conservative view could be applied to say that the NCAA should have the full ability to control what happens in these instances for student athletes looking out for the student athletes long term well being. So we really don't know what the Supreme Court is going to come out and say in this instance, and we don't know how broad their ruling might be.

So this year of 2021 is going to usher in some significant changes in the college landscape as it relates to student athletes and their rights. Also, lesser discussed is the fact that the division one council put on hold and postponed their rulings on the transfer portal. And that can have some significant changes as well to the college sports landscape.

So welcome to 2021. We've got a lot of changes that are coming. But as you'll hear on the protecting your possibilities podcast, we'll always take the approach of making sure that we educate student athletes as best as possible. So as you tune in, please do share this podcast with your colleagues. And feel free to give us a rating and any stars that you want to give us we'll take those five stars, share this podcast and share with me what you want to hear in 2021.

We want to make sure that we are talking about the topics that are important to you and that you want to hear as it relates to protecting athletes, educating athletes, so feel free to tune in and continue to share this podcast with others.

Again, I'm your host, Luke Fedlam. And I really do enjoy sharing my thoughts with you and bringing in other experts to share their thoughts in this world of both college and professional athletics and how we can best help to educate and protect athletes so that they can have a positive impact on themselves, their families and their communities. Again, thanks for tuning in, and we'll talk again real soon.

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